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# The scope of 'de novo' review of an arbitral tribunal's jurisdiction

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# LAW GAZETTE

THE LAW SOCIETY OF SINGAPORE

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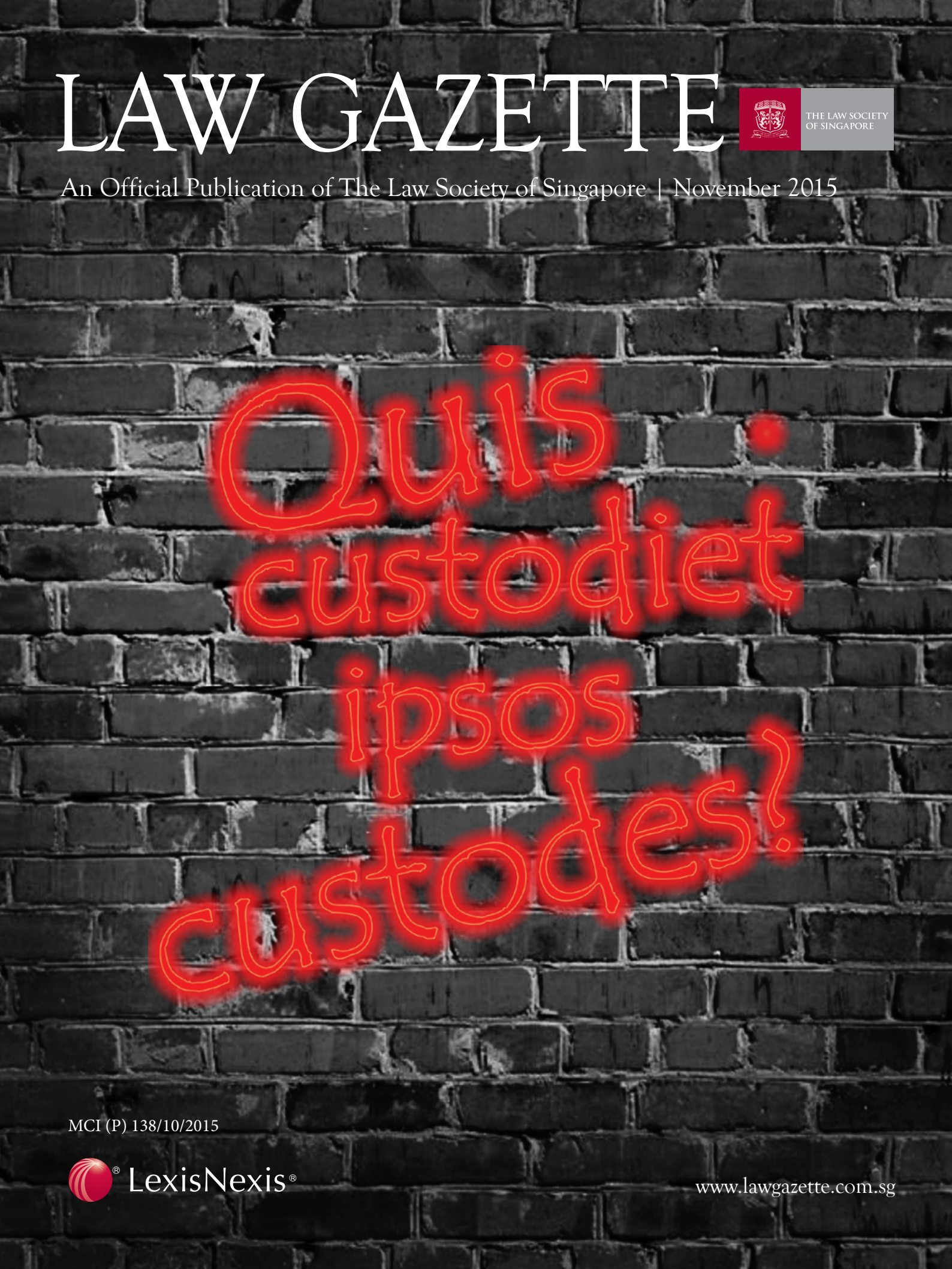


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# I Can See Clearly Now

We held our first ever Malaysia-Singapore Summit in Kuala Lumpur last month, 23 October 2015. It seems like a small incremental step in the already strong relationship between our two Bars. However, I am optimistic that it will in the long term go far beyond more than that, and develop into a significant and essential part of our legal calendar. Some background first though.

The genesis of this took place on the side-lines of the 2015 Bench and Bar Games closing dinner during a causal conversation between myself and my good friend Steven Thiru, the current President of the Malaysian Bar Council. In between a couple of beers and some friendly but unmitigated gloating on my part, we mooted the idea of a counterpoint to the annual Bench and Bar Games.

The concept is simple. When Singapore hosts the Bench and Bar, then Malaysia will host the Malaysia-Singapore Summit, and vice versa. As such, in 2016, when we travel north of the border for the Bench and Bar Games and enjoy Malaysian food and hospitality, we in turn will host the Singapore-Malaysia Summit 2016. You may have noticed that in the spirit of collegiality, we have agreed that the host country's name will come first. In time, as we establish this as an annual event, perhaps it will become known as simply, "The Summit".

What is the purpose of this annual Summit? As I mentioned above, it is the more "serious" counterpoint to the Bench and Bar Games, which is more of a social exchange. The overarching idea is to build up the breadth and depth of the relationship between the two Bars. The intention is to build it around some key events: a Council-to-Council meeting, a conference or seminar open to members of both Bars (and perhaps with the bonus of public CPD points!) where issues of mutual interest are discussed, and a networking session where we can build professional and business connectivity between our respective members. All of these can be scheduled within half or three-quarters of a day to allow our members the convenience of only having to make a day trip if they cannot commit time for an overnight stay.

I believe that we got off to a very positive start. It commenced with a morning meeting between our respective Councils and Secretariats where we discussed the concerns that we had on each side of the border, and explored ways in which we could work closer together. A little more about that later. The Bar Council then graciously hosted us to lunch before we started the conference proper in the afternoon.

There were two discussions that afternoon. The first concerned developments in commercial dispute resolution, where Lim Seng Siew, an ExCo and Council member made a presentation including a discussion of the new Singapore International Commercial Court. Lim Chee Wee, a past Bar Council President, was the Malaysian speaker, touching on some interesting developments in Company Law, Arbitration and Public Interest Litigation in Malaysia. The second session was a panel discussion on "Thriving in a Liberalised Legal Sector". This was moderated by Christopher Leong, immediate Past President of the Malaysian Bar Council, and Singapore was represented by Kelvin Wong, our Vice-President, and myself. David Dev Peter from the Malaysian Bar rounded out the panel. We had an interesting and wide ranging discussion covering foreign lawyers, regionalisation, joint ventures, lawyer remuneration, law firm structures, fee structures, technology, and many other topics.

The conference was immediately followed by a networking cocktail which allowed our members to either renew friendships or make new professional contacts.

But it was not just about the formal programme. The informal connectivity is also critical. Our Secretariat went up to KL the day before to meet informally with their Malaysian counterparts. They were able to share and exchange ideas, and learn how each organisation was structured and how it ran its operations. This cross pollenisation of ideas is and will continue to be invaluable and can only enhance the professionalisation of our Secretariat. On my end, I had the pleasure of being hosted to dinner the evening before by Steven, Chris and Chee Wee, where in the midst of the inevitable gossip and litigator's war stories, we were able to

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**The Singapore Law Gazette**

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To serve our members and the communitty by sustaining a competent and independent Bar which upholds the rule of law and ensures access to justice.

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*Continued from page 1*

bounce ideas off each other in an informal and causal manner without the constraints inherent in a more formal setting.

What then were the takeaways from this inaugural event? Two stand out in my mind.

First, we had a candid exchange of what we each believed were the Rule of Law issues that we faced in our respective countries. It helped us appreciate what the Malaysian Bar was facing. Without passing any judgment, casting aspersions or interfering in the internal politics of another country, it cannot be denied that we witness issues like political abuse of power, financial improprieties, misfeasance in public office, lack of due process in investigations, and judicial corruption being hotly debated and ventilated in Malaysia. And the Bar Council is inextricably involved in this discourse. My respect for their courage and commitment grows every time I meet my counterparts. However, I also discovered newfound appreciation for the entrenchment and respect for the Rule of Law that we have in Singapore. It is not perfect, but it is largely observed both in form and spirit as a fundamental pillar of our system, and it works very well most of the time. We do of course have issues confronting us, but these are different manifestations of the Rule of Law from those faced in Malaysia. In Singapore, we don't need to worry about judicial independence or corruption, or abuse of process or power. The checks and balances in our system work. Our Rule of Law concerns are more likely to, *inter alia*, manifest themselves as incomplete access to justice, and inadequate access to counsel in criminal cases. We address the former primarily through our *pro bono* regime for accused persons who pass the means test, and through our partnership with the Government, in enhanced CLAS, have a framework to move forward. The latter has been a bugbear for generations of criminal lawyers, as accused persons can be remanded and possibly held in remand for weeks without seeing a lawyer, something which shocks many foreign lawyers even from jurisdictions where the Rule of Law is not as enshrined or respected as in Singapore. There are positive developments in this area, such as an experiment with video interviews with the police, but the truth is that we can do better. The balance between investigatory effectiveness and respect for individual rights is capable of a healthier balance. All stakeholders need to be open to a continuing conversation about this. I'll just say this for now – the attitude that lawyers might somehow disrupt or obstruct an investigation if accused persons have early access to counsel is disconsonant with our aspirations to develop world class domestic lawyers, and our call for more young lawyers to choose criminal practice as a career option. In many ways, denying early access to counsel is a clear signal – a vote of no confidence in our criminal defence lawyers. Is that really the message that we want to communicate to all aspiring law students?

Second, we explored how both Bars could take tangible steps to work together. The Bar Council observed that both our countries had a common grievance, a common health and environmental hazard, namely the haze. It was a clear and present health hazard for the duration of our visit to Kuala Lumpur. We discussed the possibility of setting up a joint study group or committee, which would be tasked to study the legal issues in respect of the haze, and how the law could be used, or better used, to combat and manage this problem in the future. While we have not finalised the terms of reference or the composition of the group, I envisage that it will analyse how existing laws could be better enforced or made more effective, or suggest new or modified laws or regulation which may give the authorities, corporations or even private citizens in both our countries more weapons and options. It is a subject which impacts all of us (and I look forward to the output of the joint committee), but equally exciting is the initiative and commitment of both our Bars to work on something of common interest, and like the idea of the Summit, may this be the first of many such collaborations to come.

Henry Ford said, "Coming together is a beginning, keeping together is progress, working together is success". I look forward to the 2016 Singapore-Malaysia summit, and to clear skies ahead.

**Thio Shen Yi, Senior Counsel**
President
The Law Society of Singapore

## Notice of Change of Particulars

Members are required to submit a Notice of Change of Particulars through eLitigation (https://www.elitigation.sg/home.aspx) whenever there is any change in the particulars relating to your practice, eg if you move from one law practice to another, if there is a change in your designation, or if you cease to practise.

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Please refer to a step-by-step guide on submitting a Notice of Change of Particulars provided by the Supreme Court at https://app.supremecourt.gov.sg > eLitigation > Practising Certificate e-Filing Service.

# Diary

**7 October 2015**
**Paralegal Certification Course (12th Run)**
Jointly organised by the Law Society of Singapore and Temasek Polytechnic
2.00pm-6.00pm
Temasek Polytechnic

**8-9 October 2015**
**SG50 Double Bill: Incorporating Biennial Lecture 2015/Annual CPD Day 2015**
Organised by the Continuing Professional Development Department
9.00am-6.00pm
Supreme Court

**19 October 2015**
**Annual General Meeting**
6.00pm
NTUC Centre

**20 October 2015**
**Joint Seminar between DBS & Law Society: Brace for More Turmoil**
Jointly organised by the Law Society of Singapore and DBS Treasures Private Client
7.30pm-9.00pm
12 Marina Boulevard

**21 October 2015**
**Seminar on Challenging Clients, Challenged Lawyers**
Organised by the Continuing Professional Development Department
3.00pm-5.00pm
55 Market Street

**23 October 2015**
**Malaysia/Singapore Summit 2015**
Jointly organised by the Law Society of Singapore and Malaysian Bar Council
Kuala Lumpur

**29 October 2015**
**Annual Election of Council**
8.00am-6.30pm
Parkroyal on Pickering

# Upcoming Events

**9, 10 & 11 December 2015**
**The Law Society Trial Advocacy Course 2015**

**6 January (1st Run) & 7 January 2016 (2nd Run)**
**Seminar on Risk & Compliance - Business Benefits of Risk Management**

**7 & 8 April 2016**
**Litigation Conference Workshop 2016**

# From the Desk of the CEO

It has been a busy month for the Law Society, with Council, our Committees and Secretariat working on overdrive, in part due to the numerous events taking place in October and November 2015.

Some of the events of note include the following:

1. **Biennial Lecture and Annual CPD Day (8-9 October)**

For the first time, the Law Society held a combined Biennial Lecture and Annual CPD Day, in a special marquee SG50 event. We were honoured to have Professor Tommy Koh (Ambassador-at-Large, Ministry of Foreign Affairs) as our Biennial Lecture speaker.

This event was jointly organised by the Continuing Professional Development Committee and the International Relations Committee, and was a two-day event which provided practitioners with an overview of the development of Singapore and International Law over the last 50 years, as well as latest updates in the respective practice areas.

In keeping with our aim of making CPD courses affordable for members, fees for the two-day conference were kept low at a highly subsidised rate of $50 (including GST), with 12 CPD points awarded to members for full attendance at the conference, as accredited by SILE.

2. **Malaysia-Singapore Summit (23 October)**

The Malaysian Bar Council and the Law Society of Singapore jointly organised the Inaugural Malaysia-Singapore Summit on 23 October. The Malaysia-Singapore Summit seeks to be a platform for practitioners of both Malaysia and Singapore to discuss topics of mutual interest.

Representatives of the two Councils met for a half day discussion and lunch followed by a seminar and networking tea which was open to all members. Secretariat staff also took the opportunity to visit our counterparts at the Malaysian Bar and the Malaysia Legal Aid office, and it was a good learning opportunity all around.

The next Singapore-Malaysia Summit will be held in Singapore, and is slated for Q3/Q4 2016.

3. **Annual Election of Council (29 October)**

The Law Society's annual elections were held on 29 October at Parkroyal on Pickering. There were elections for the Senior Category only, and we congratulate Anand Nalachandran, Chia Boon Teck and Thio Shen Yi, SC who garnered the most votes from members. In addition, we welcome the following: Dinesh Dhillon, Tito Isaac, Felicia Tan and Nicholas Thio, as new members on Council, as well as Kuah Boon Theng, Yeo Chuan Tat, Paul Tan and Grismond Tien back into Council for another term. The Secretariat and I look forward to serving Council 2016 next year.

We would also like to thank our out-going Council members, Lok Vi Ming, SC, Steven Lam, Sunita Pahar, Chiam Tao Koon and Usha Chandradas for their contributions and service on Council.

► **Tan Su-Yin**
Chief Executive Officer
The Law Society of Singapore

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# A Call to Alms


Guests in attendance

Established in 2014 and cheekily labelled the "conscience of the Academy", the Singapore Academy of Law's Corporate Social Responsibility ("CSR") Sub-committee extended an invitation to its inaugural roundtable discussion on the Academy's CSR Initiatives. Over lunch at Wild Rocket, a total of 50 guests from the distinguished judiciary and Attorney-General's Chambers, international and local law firms, gathered to discuss their existing CSR initiatives and to find out how they can give more.

In line with the Academy's longstanding support of the Yellow Ribbon Project, Chef Willin Low was assisted by former inmates in the preparation of his lunch, which included "Mod Sin" favourites like the Salted Egg Crab Cake, the 48-hour Beef Short Rib Rendang, and the Sugarcane Sorbet.

The Academy's CSR Sub-committee seeks to implement sustainable and long-term CSR programmes within the legal ecosystem. Chaired by Mr Thio Shen Yi, SC, the Sub-committee comprises members from the Singapore Bar and foreign firms, as well as representatives from the law schools and private entities. This DNA has proved useful in developing private-public CSR partnerships with stakeholders who share similar values and beliefs.

The CSR Sub-committee seeks to be the platform to support, initiate, facilitate, and co-ordinate. "For firms with the numbers to supply but are unsure how to get involved – we put you in touch with where the demand lies", said Mr Thio in his introduction of the Academy's CSR initiatives. "For those firms who lack the manpower, we offer the option to marry up two–three firms, depending on the need and relevant programmes."

Mr Thio also spoke about the various avenues available to contribute. These included the Academy's support of the YRF-SAL Bursary, which focuses on the re-integration of ex-offenders and provides funds for financially needy ex-offenders for their vocational and skills training. In addition to contributing funds, Mr Thio cited alternative ways of facilitating re-integration, such as firms which offered short-term employment or attachments to ex-offenders. Present in attendance was Mr Darren Tan (36 years old), a beneficiary of the Bursary.

Darren was incarcerated for almost 11 years and received 19 strokes of the cane over three occasions for armed robbery and drug trafficking. Darren successfully applied to NUS Law in 2009 during his last imprisonment, and in 2010 was

selected to become a recipient of the Bursary. The Bursary paid for his tuition fees and provided him with a monthly allowance throughout his years as a student. Darren was called to the Singapore Bar in 2014, and is currently working as an associate in TSMP Law Corporation.

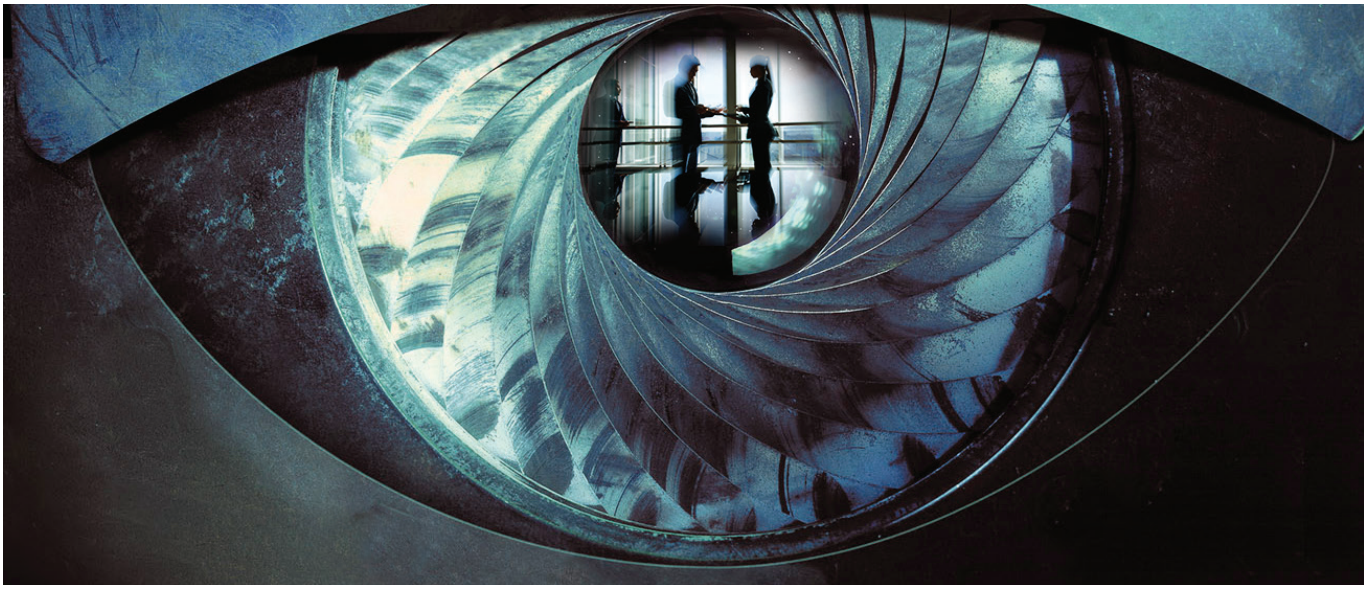
This year will also mark the launch of the annual SAL-YRF Charity Futsal – The CJ's Cup 2015. Co-organised by the Academy and the Yellow Ribbon Fund and held on 14 November 2015, this futsal tournament will see lawyers from various firms, and the beneficiaries of the Yellow Ribbon Fund, pit their skills against each other in a round robin match line-up. Up for grabs is the hallowed CJ's Cup trophy, which the winner takes home for the year. All proceeds raised at this event will go to the YRF-SAL STAR ("Skills Training Assistance to Re-start") Bursary.

▶ **Samantha Lee**
TSMP Law Corporation
Member, Corporate Social Responsibility Sub-committee
Singapore Academy of Law

*Guests enjoying one another's company*

It is trite that a Court should be slow to interfere with the decision of a disciplinary body statutorily empowered to regulate its own profession. But is the decision of sentencing something that should be left solely to that disciplinary body? *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 suggests that in this respect at least, Courts will take an active role.

# Who Watches the Watchmen? The Relationship Between the Court of Three Judges and Medical Disciplinary Tribunals



The medical profession, like the legal profession, is self-regulated. Medicine is a highly specialised field of knowledge, and few laymen would be able to appreciate issues of ethics and professional misconduct without proper training. Hence, when a complaint is made against a doctor, the formal bodies responsible for investigating the complaint are comprised mostly of other doctors.

Under the Medical Registration Act ("MRA"),[1] a Complaints Committee first reviews the complaint, and if it merits a formal inquiry, a Disciplinary Tribunal ("DT") will embark on a full fact finding process to decide if the doctor is guilty of professional misconduct. Both bodies comprise two medical practitioners and either a lay person or senior legal practitioner.[2] However, the sole and final avenue of appeal against a DT's decision is to the High Court, which is heard by a Court of 3 Judges ("C3J").[3] The C3J thus occupies the apex position in the regulation of the medical profession, despite having no medical background or expertise.

Because of this, s 55(11) of the MRA provides that:

> … the High Court shall accept as final and conclusive any finding of the Disciplinary Tribunal relating to any issue of medical ethics or standards of professional conduct unless such finding is in the opinion of the High Court unsafe, unreasonable or contrary to the evidence.

Case law has interpreted s 55(11) to mean that the C3J should be slow to interfere with the decision of the DT.[4] After all, a DT not only has the benefit of hearing oral evidence, it is a specialist tribunal with its own professional expertise, and understands what the medical profession expects of its members.[5] Nonetheless, the C3J will not unduly defer to

the views of the DT in a manner which renders its appellate powers nugatory.[6]

However, what has yet to be considered is whether a DT's decision on sentence falls under the rubric of "issue of medical ethics or standards of professional conduct", and will ordinarily not be set aside. The recent decision in Singapore *Medical Council v Kwan Kah Yee* ("*Kwan Kah Yee*") suggests that while the C3J will not hesitate to revise sentencing precedents of DTs if it feels that they are unjustifiably lenient, the standard for appellate intervention in sentences imposed by DTs remains a high one.[7]

## Facts and Decision in *Kwan Kah Yee*

The Respondent was a hospice doctor who also certified the cause of death of deceased persons. In 2010, he certified Patient A's cause of death as bronchiectasis, with chronic obstructive airway disease ("COAD") as an antecedent cause. Subsequently, it was discovered that the Respondent based his certification on non-existent medical records. In fact, Patient A had no history of either bronchiectasis or COAD at all.

In 2011, the Respondent certified Patient B's cause of death as ischaemic heart disease. The SMC later received a complaint from Patient B's sister that she had no history of heart disease. Once again, investigations revealed that the Respondent relied on non-existent records, and worse still had tried to deceive Patient B's relatives by lying to them that he had proper medical grounds for his certification. The SMC thus brought charges of professional misconduct against the Respondent for his false certification of Patient A and B's deaths.

### *The Decision of the Disciplinary Tribunal*

The Respondent faced two charges: one for the false certification of cause of death for Patient A, and another for Patient B. As the Respondent elected to plead guilty, the DT only had to consider the issue of sentencing.[8]

Using his previous conviction before a Disciplinary Committee ("DC") in July 2011 as a benchmark (this was under the old MRA regime where DTs were known as DCs), the DT sentenced the Respondent to three months' suspension on both charges. The DT reasoned that since he had claimed trial before the DC, by parity of sentencing, his sentence for pleading guilty should not exceed the DC sentence. The DT also ordered both suspension terms to run concurrently: it felt that the charge for Patient A's false death certificate could have been consolidated with the DC proceedings had proper steps been taken, and for it to be investigated by a DT when it could have been so consolidated amounted to the Respondent standing trial "twice over" for similar charges.

### *The Decision of the Court of Three Judges*

On appeal, the C3J held that the DT's sentence was manifestly inadequate in all the circumstances. It criticised the DT's sentence as being "overly lenient to the point of being wrong in principle",[9] given that the issuance of a false death certificate is a very grave breach of a doctor's ethical and professional duties.[10] A severe sentence was also warranted because death certificates serve important legal and statistical functions,[11] and a false death certificate might hamper the police from uncovering possible homicides.[12]

Finally, the C3J pointed out that the DT was wrong in law to hold that the charge relating to Patient A could have been consolidated with the DC proceedings. The DC proceedings and the DT proceedings were governed by different versions of the MRA, and neither had the power to join proceedings that were governed by a different legal regime.[13] The Court thus enhanced the three months' suspension for each charge to 18 months' suspension, and ordered both sentences to run consecutively for an aggregate suspension term of 36 months.

## Appeals Against Sentences of Disciplinary Tribunals and *Kwan Kah Yee*

As mentioned earlier, the direction in s 55(11) MRA to accept a DT's decision as "final and conclusive" only applies to "any issue of medical ethics or standards of professional conduct". As past case law demonstrates, it is only in clear and extreme cases that the C3J will overturn a DT's finding of professional misconduct, such as if it goes beyond the ambit of a charge to take into account irrelevant facts.[14] In sentencing however, the C3J has previously shown itself more than willing to intervene, reducing sentences on the basis that they were out of line by a few months with previous precedents.

*Kwan Kah Yee* is interesting for offering an insight as to the possible direction the C3J may take in two aspects of sentencing appeals: (i) the threshold for appellate intervention; and (ii) the extent to which past precedents will be reviewed.

### *The Threshold for Appellate Intervention*

In criminal law, a sentence is only manifestly inadequate or manifestly excessive if it requires "substantial alterations rather than minute corrections to remedy the injustice", and

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# Untying the Knot

During the course of matrimonial disputes, situations arise where solicitors can find it helpful to engage specialist investigators and appraisers. In particular, forensic accountants can help to provide the court with a clearer view of the financial position and to uncover assets and value concealed by one party or their associates. In this article, we explore a case study based loosely on a number of past cases in which we have been involved.

**Sarah and Jeremy: Asset Investigation, Business Valuation and Lump Sum Assessment**

Sarah and Jeremy had been married for approximately 15 years and have two children who are still being supported by their parents. Sarah petitioned for the divorce, having lived apart from Jeremy for several months, and Jeremy believes that she intends to re-marry. Since separating from Sarah, Jeremy has taken care of the children and they have been financially supported by Sarah.

Sarah is a majority shareholder and sole director in a Singapore-based private company with subsidiaries throughout the Asia-Pacific region, Europe and the Middle East. Her assets include yachts, art and a substantial wine collection in addition to the three different lines of business. Some of the subsidiaries are Cayman Islands and BVI entities. Sarah claims her businesses have been suffering over the last few years and the value of the group has been greatly diminished.

Jeremy, now in his late thirties, has not been working for the last 10 years of the marriage and has little knowledge of Sarah's business affairs. His lawyers, concerned that neither they nor he have a full understanding of the couple's separately and jointly held assets or the value of the businesses, engage forensic accountants.

The first task would be to look into how open Sarah has been with the disclosure of her business holdings and what has been disclosed in the court filings (Form 206 / Affidavit of Assets and Means in Singapore or Form E in Hong Kong). From these filings, it is possible to start to build a picture of the group structures and the companies within them. Typical sources of information that would reveal details of the company structure include audited financial statements, management accounts, filings at company registries (e.g. ACRA in Singapore), bank statements and online data aggregators and research tools.

When faced with a wealthy spouse such as Sarah, whose assets are distributed in a number of jurisdictions, it is vital to have individuals on the investigation team who are familiar with those jurisdictions or to have associates working in them who can assist. With widely differing filing and reporting requirements for businesses around the world, knowing what information is likely to exist and where to look for it is essential if the true extent of the parties' assets is to be established. A forensic accountant with the relevant experience and global network of offices can be of assistance to solicitors in helping obtain, analyse and interpret the information.

*Continued from page 11*

the mere fact that an appellate Court would award a higher or lower sentence is insufficient in itself.[15] In practical terms, this requires the appellate Court to compare the sentence imposed by the trial Court to sentencing precedents and benchmarks, and to see if the sentence imposed is severely off the mark.

This comparison can be done because Courts have a wide range of punishments to choose from: using the seminal case of *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* as an example, it was fairly obvious that the original sentence of 18 months' imprisonment for a rape charge was manifestly inadequate when compared to the benchmark sentence – 10 years' imprisonment and six strokes of the cane.[16]

In medical disciplinary hearings however, DTs have a narrower range of sentencing in terms of the length of suspension imposable. Per s 53(2) MRA, it is between three months and three years. If the sentence imposed by the DT only differs by a few months from the relevant benchmarks, should the C3J nonetheless still interfere with the DT's decision?

Prior decisions by the C3J seem to suggest so. For example, the Court in *Lee Kim Kwong v SMC ("Lee Kim Kwong")* reduced the appellant doctor's sentence from nine months to five months,[17] and in *Ho Paul v SMC* a three-month suspension and a $1,000 fine was reduced to just a $2,500 fine.[18] While no reason was expressly articulated in these cases, it is arguable that sentencing is a matter of public policy rather than one of medical ethics or professional conduct, and hence is something that Courts should have the final say on. This is in contrast to the UK position as stated in *Council for the Regulation of Health Care Professionals v General Medical Council ("CRHC v GMC")*, which confirmed that the threshold for appellate intervention in medical disciplinary proceedings is the same as that in criminal law.[19]

*Kwan Kah Yee* seems to have reversed this trend, at least impliedly. The C3J's decision was consistent with the criminal standard; there was no question that the DT's original sentence was manifestly inadequate, given the 30 months' difference between it and the C3J's enhanced sentence.

Furthermore, *CRHC v GMC* was cited in the judgment, and the C3J seemed to impliedly approve its formulation of the test for appellate intervention being whether that sentence is "outside the range of sanctions that the relevant disciplinary panel, applying its mind to all the factors relevant to its jurisdiction, could reasonably consider appropriate".[20]

It is submitted that this approach is entirely appropriate. As noted by the Court of Appeal itself, sentencing is largely a matter of discretion and requires a fine balancing of myriad considerations.[21] It follows that a DT, being a specialist body with its own professional expertise, is in the best position to decide on what sentence to impose on medical practitioners, and the C3J should be slow to interfere with that decision. It would be contrary to the spirit of s 55(11) of the MRA to do otherwise.

## *The Revision of Sentencing Precedents*

On the other hand, it is submitted that the active review of sentencing precedents is something that is entirely within the purview of Courts. The principal purpose of sanctioning an errant medical practitioner is to preserve and maintain public confidence in the profession,[22] and allowing the medical profession to have the final say in the sentence might lead to the public questioning if doctors were covering up for each other.

In *Kwan Kah Yee,* the C3J made it clear that a DT's reliance on sentencing precedents will be subject to strict scrutiny. The seeds for this were first planted in the 2014 decision of *Lee Kim Kwong v SMC*, where the C3J cautioned against relying unduly on older precedents because of the advances of practices in medicine. It pointed out that sentences in the past may not necessarily be an appropriate benchmark, and it was open to the SMC to argue that sentencing tariffs should be revised upwards.[23]

In *Kwan Kah Yee*, the C3J went one step further and rejected the past sentencing precedents for improperly certified death certificates. Calling the precedents "exceedingly and inexplicably lenient",[24] the C3J considered that the harm inherent in falsely certifying the cause of death was not adequately reflected in a mere fine and censure or suspension for three months.[25] As a basis for comparison, it used the penalties under the UK medical disciplinary framework as an example: in the UK doctors who falsely certified the cause of death were suspended for at least six months per charge,[26] which itself is half the maximum sentence of 12 months suspension.[27] In contrast, a DT can impose a suspension term between three months and three years.[28]

*Kwan Kah Yee's* approach diverges from the position in past cases, which did not subject precedents to such intense review. For example, in *Gan Keng Seng Eric v SMC* ("*Eric Gan*"), the C3J upheld a six months' suspension term even though the appellant's wilful neglect and gross mismanagement of a patient's post-operative treatment resulted in the patient's death.[29] Unlike in *Kwah Kah Yee,* the C3J in *Eric Gan* did not question if three months' suspension was too lenient a sentence for a doctor whose actions resulted in a death's death.[30] Similarly, the C3J in *Lee Kim Kwong* did not consider if the precedents for doctors whose negligence resulted in serious harm to patients were too light; it used these precedents to arrive at a benchmark sentence of three months' suspension of these kind of cases (in fact *Eric Gan* was one of those precedents cited by the C3J).[31]

It appears that the C3J will now subject sentencing precedents to stricter scrutiny, and will not hesitate to revise them if they fail to take into account the harm caused by the nature of the professional misconduct. This approach, it is submitted, does not contravene the spirit of s 55(11) MRA, and in fact is consistent with it. Unlike sanctions for criminal offences, there are no prescribed punishments for professional misconduct, and neither are there periodic reviews conducted by an impartial body (like Parliament) to ensure that these precedents are up to date.

## Concluding Remarks

At the end of the day, the question is one of balance. The decision of a DT as a disciplinary body with its own professional expertise should be respected, but not to the point that it cannot be challenged whatsoever. In this regard, the C3J plays a crucial role as an impartial body that, whilst slow to interfere with the decision of respected professionals, will nonetheless step in if an egregious legal or factual mistake is made.

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Notes

1 Cap 174, 2014 Rev Ed.

2 Sections 40(1) and 50(1) MRA.

3 Section 55(1) MRA.

4 *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612 at [39].

5 *Gobinathan Devathasan v Singapore Medical Council* [2010] 2 SLR 926 at [29].

6 *Supra* (note 4 above) at [42].

7 [2015] 5 SLR 201.

8 *Ibid,* at [20].

9 *Ibid,* at [49].

10 *Ibid,* at [52].

11 *Ibid,* at [53].

12 *Ibid,* at [52]. The Coroner's Act (Cap 63A, 2012 Rev Ed) requires certain types of unexplained deaths to be investigated.

13 *Ibid,* at [65]-[66].

14 As was the case in *Ang Pek San Lawrence v SMC* [2015] 1 SLR 436.

15 *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [14].

16 [2008] 1 SLR(R) 601 at [96].

17 [2014] 4 SLR 113 at [39]-[40].

18 [2008] 2 SLR(R) 780 at [16].

19 [2004] 1 WLR 2432 at [10] and [14].

20 *Ibid,* at [14].

21 *Supra* (note 15 above) at [81].

22 *Raschid v General Medical Council* [2007] 1 WLR 1460 at [19].

23 [2014] 4 SLR 113 at [45]-[47].

24 *Supra* (note 7 above) at [34].

25 *Supra* (note 7 above) at [28] and [33].

26 *Supra* (note 7 above) at [41]-[43].

27 *Supra* (note 7 above) at [46].

28 Section 53(2)(b), MRA.

29 [2011] 1 SLR 745.

30 *Ibid,* at [54]-[55].

31 [2014] 4 SLR 113 at [39]-[40].

In *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV* [2014] 1 SLR 372, the Singapore Court of Appeal held that the Court will apply a *de novo* standard of review when reviewing an arbitral award on the grounds of lack of jurisdiction. What exactly is the scope of *de novo* review? Specifically, can a party adduce before the Court fresh evidence that had not been put before the arbitral tribunal? Can a party insist that the Court re-hear oral testimony of witnesses who had testified before the arbitral tribunal? Two recent Singapore High Court judgments considered these issues and appeared to give somewhat differing guidance.

# The Scope of "*De Novo*" Review of an Arbitral Tribunal's Jurisdiction


## Introduction

*In PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV* [2014] 1 SLR 372 ("Astro"), the Singapore Court of Appeal held that the Court will apply a de novo standard of review when reviewing an arbitral award on the grounds of lack of jurisdiction.

What exactly is the scope of *de novo* review? Specifically, can a party adduce before the Court fresh evidence that had not been put before the arbitral tribunal? Can a party insist that the Court re-hear oral testimony of witnesses who had testified before the arbitral tribunal?

These separate but related issues can arise at two different stages. One, when a party refers a tribunal's ruling on jurisdiction for curial review under s 10 of the International Arbitration Act ("IAA"), and two, when a party challenges a tribunal's jurisdiction when setting aside or resisting enforcement of the tribunal's award under the IAA read with the Model Law.

Two recent Singapore High Court judgments considered these issues. In Government of the *Lao People's Democratic Republic v Sanum Investments Ltd* [2015] SGHC 15 ("*Sanum*"), and *AQZ v ARA* [2015] SGHC 49 ("*AQZ*"), which were delivered approximately three weeks apart, the Singapore High Court appeared to give somewhat differing guidance.

This note discusses the apparently conflicting positions, and suggests a path for navigation should the same issue confront the Singapore Courts again.

## *Sanum*: No Unconditional Power to Adduce Fresh Evidence at Will

In *Sanum*, the plaintiff was the Government of Laos. The defendant investor, Sanum Investments Limited, was a company incorporated in Macau. The defendant made certain investments in the gaming and hospitality industry in Laos. Disputes subsequently arose in relation to those investments and the defendant commenced arbitration proceedings against the plaintiff. The plaintiff disputed the jurisdiction of the arbitral tribunal on the basis that the PRC-Laos bilateral investment treaty did not apply to Macau. The Tribunal held otherwise on 13 December 2013. The plaintiff subsequently brought an application to refer the issue of jurisdiction to the High Court under s 10 of the IAA.

As part of the s 10 proceedings, the plaintiff sought to adduce as evidence two diplomatic letters which had not been adduced before the arbitral tribunal.

The first letter (dated 7 January 2014) was sent from the Laotian Ministry of Foreign Affairs to the PRC Embassy in Vientiane, Laos. The letter stated Laos' view that the PRC-Laos BIT did not extend to Macau and sought the views of the PRC Government on the same. The second letter was the reply from the PRC Embassy in Vientiane, Laos (dated 9 January 2014) stating a similar view that the PRC-Laos BIT did not apply to Macau "unless both China and Laos make separate arrangements in the future".

The investor argued that the *Ladd v Marshall* conditions were applicable (or, alternatively, relevant), and that Laos had not satisfied any of the conditions for the admission of the two letters. The English case of *Ladd v Marshall* [1954] 1 WLR 1489 established the criteria before an appellate Court will accept fresh evidence following a trial before the lower Courts, namely:

1. It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;
2. The evidence must be such that, if given, it would probably have had an important influence on the result of the case, though it need not be decisive; and
3. The evidence must be apparently credible, though it need not be incontrovertible.

The learned Judicial Commissioner Leow recognised that "the *Ladd v Marshall* principles do not strictly apply in this application … However, **a party does not in my view have a full unconditional power to adduce fresh evidence at will**" (*Sanum* at [43] — [44]) (emphasis added).

Adopting a modified *Ladd v Marshall* test introduced by the Singapore Court of Appeal in *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 ("*Lassiter*"), Leow JC held that fresh evidence may be admitted if:

1. the party seeking to admit the evidence demonstrates sufficiently strong reasons why the evidence was not adduced at the arbitration hearing;
2. the evidence if admitted would probably have an important influence on the result of the case though it need not be decisive; and
3. the evidence must be apparently credible though it need not be incontrovertible (*Sanum* at [44]).

By way of background, *Lassiter* involved an appeal on a Registrar's assessment of damages to the High Court. The Court of Appeal in *Lassiter* was concerned that any liberal use of wide discretion to admit fresh evidence would defeat the very rationale underlying the delegation of matters to the Registrar, *viz*, to save the time of the Judge. This objective would be lost, or substantially diminished, if the applicable principle is that either party is freely entitled to adduce new evidence at the hearing before the Judge or that the Judge should, as a rule, exercise his discretion liberally to admit such fresh evidence, including the *viva voce* examination of witnesses. That would mean that everything could be re-opened or further clarified.

Consequently, *Lassiter* held that in cases where a hearing before a Registrar takes on the characteristics of a full trial or where oral evidence has been recorded (such as assessments of damages, takings of accounts and inquiries), all the evidence should be presented to the Registrar. Fresh evidence should not be allowed to be adduced unless the modified *Ladd v Marshall* test (set out above) is satisfied.[1]

Applying the modified *Ladd v Marshall* test to the case at hand, Leow JC admitted the two letters. He eventually found that the tribunal did not enjoy jurisdiction.

## *Questioning of Sanum*

The transposition of the modified *Ladd v Marshall* test in an application under s 10 of the IAA drew swift comments as follows:[2]

> The analogy with *Lassiter* is, however, flawed as


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this case concerned an appeal from a registrar's assessment of damages to a Judge in chambers and the Court of Appeal's reasoning in that case was based on the fact that the function of the registrar was one of administrative convenience, "to save the time of the Judge" (*Lassiter,* para. 20). This reason is however not applicable to a Court's review of an investment arbitral tribunal's decision on jurisdiction and, thus, the test is not transposable to a case like the present. Indeed, the Judge does not provide any reasons as to why the test should be applied and why its first limb should be relaxed in this case.

The Judge's approach stands in stark contrast with the *de novo* jurisdiction that the Court possesses when reviewing jurisdictional findings of arbitral tribunals. The sole *raison d'être* of the test in *Ladd v Marshall* is to allow fresh evidence to be adduced in a case on which judgment has already been delivered. It is thus directly linked to the appellate process. By applying the test, even in a relaxed version, to a review of an arbitral tribunal's decision on jurisdiction, the High Court seems to indicate that it exercises an appellate function and does not carry out a complete rehearing.

## *AQZ: Parties Free to Adduce New Evidence*

Some three weeks after *Sanum* was released, the learned Justice Prakash released her judgment in *AQZ*.

In *AQZ*, the plaintiff was a mining and commodity trading company incorporated in Singapore. The defendant was the Singapore subsidiary of an Indian trading and shipping conglomerate. Pursuant to a dispute that arose between them, an SIAC arbitral tribunal held in an award that it had jurisdiction, and found in favour of the defendant on the merits.

The plaintiff applied to the Singapore High Court under s 10 of the IAA to review the tribunal's ruling on jurisdiction, or alternatively, under s 3(1) of the IAA read with Article 34(2)(a) of the Model Law to set aside the award.

The plaintiff argued that, in an application to set aside an arbitral award on the ground that the arbitral tribunal lacked jurisdiction to hear the dispute, a Court was required to carry out a *de novo* hearing of the matter. According to the plaintiff, this meant the Court had to conduct "a complete retrial and/or rehearing" of the question of whether the arbitral tribunal had jurisdiction. Hence, the Court ought to hear oral evidence from the parties' witnesses before deciding such applications. This was so regardless of whether the application was brought pursuant to s 10(3) of the IAA and/or art 16(3) of the Model Law; or s 3(1) of the IAA read with the relevant limb of art 34(2)(a) of the Model Law.

The plaintiff eventually withdrew this submission and was content for its challenge to proceed on affidavit evidence alone. Nevertheless, because parties had made submissions, Prakash J set out her "brief views" as follows (at [49]-[59]):

1. There can be no doubt that the Court will undertake a *de novo* hearing of the arbitral tribunal's decision on its jurisdiction in an application to set aside an arbitral award on the ground of lack of jurisdiction to hear the dispute.
2. But that does not mean that oral evidence and cross-examination will be allowed in every application, in effect, turning every challenge into a complete rehearing of all that had occurred before the arbitral tribunal. Witnesses who had already been heard by the tribunal will only be called back when necessary.

3. The Rules of Court do not envisage a *de novo* rehearing of all the evidence in every case of an application to set aside an award as the default rule. Rather it contemplates that generally the matter will be resolved by way of affidavit evidence.

4. However, the Court may allow oral evidence and/or cross-examination when it considers (i) that there is or may be a dispute as to fact; and (ii) that to do so would secure the "just, expeditious and economical" disposal of the application. There must be a reason beyond the existence of factual disputes to allow oral examination and cross-examination.

5. There is nothing in the Rules of Court which restricts parties from adducing new material that was not before the arbitrator. Parties can adduce new evidence in the affidavits they file in the Originating Summons and if there is a need, the Court may order the deponents to appear and be cross-examined on the new evidence.

On this last point, the learned Judge explained as follows (at [59]):

> Moreover, in *Electrosteel [Castings Ltd v Scan-Trans Shipping & Chartering Sdn Bhd* [2003] 1 Lloyd's Rep 190], the Court also considered whether evidence on rehearing should be confined to that adduced before the arbitrator. The Court came to the conclusion that parties were free to adduce new evidence because there was no provision restricting the introduction of additional evidence on rehearing. However, it cautioned that parties should not:
>
> > … seek two evidential bites of the cherry in disputes as to the jurisdiction of arbitrators, not least because: (1) evidence introduced late in the day may well attract a degree of scepticism and (2) the Court has ample power to address such matters when dealing with questions of costs. …
>
> I would agree with this proposition as well. …

## Commentary

It is possible to read *Sanum* and *AQZ* as two ends of a spectrum. On one end, *Sanum* stands for the proposition that the modified *Ladd v Marshall* test has to be satisfied before any fresh evidence will be admitted. On the other end, *AQZ* can be taken to stand for the proposition that fresh evidence is admissible as of right, with the caveat that the late introduction of evidence may affect its weight as well as costs.

Beginning from first principles, it is indisputable that an application to challenge a tribunal's jurisdiction does not operate by way of an appeal. Nor does an arbitral tribunal serve a function that is purely delegated by the Court in order to save the Judge's time. On that basis, the rationale for having a modified *Ladd v Marshall* test that was expounded in *Lassiter* does not strictly apply in this context.

Nevertheless, the underlying rationale of *Ladd v Marshall* is not completely irrelevant. The justification for *Ladd v Marshall* is embodied in the Latin maxim interest *reipublicae ut sit finis litium* – it is in the public interest that there is an end to litigation.[3] It can similarly be said that it would be in the public interest to prevent any abuse of the process by which an arbitral tribunal's jurisdiction is finally determined by the Courts.

Strands of similar reasoning have emerged in the Hong Kong Court of First Instance Hong Kong judgment of *Astro Nusantara International BV and ors v PT Ayunda Prima Mitra and ors* HCCT 45/2010 (17 February 2015), albeit in a different way. The Hong Kong Court held that there was a principle of good faith under Hong Kong law[4]. It would be inimical to the principle of good faith that:

> … a party to an arbitration, while being fully aware of an objection (whether in relation to the jurisdiction of the tribunal or the procedure or conduct in the course of the arbitration), should be permitted to keep the objection in reserve, participate fully in the arbitration and raise the objection in the enforcing Court only after an award had been made against him by the tribunal.

Without having to go so far as finding that a principle of good faith subsists under Singapore law, it is arguable that any unfettered right for a party to adduce fresh evidence at will may unduly expose the process (by which an arbitral tribunal's jurisdiction is finally determined) to abuse.

A possible way of calibrating the right balance between these two ends represented by *Sanum* and *AQZ* can be gleaned from the recent English decision of Males J in *Central Trading & Exports Ltd v Fioralba Shipping Co* [2014] EWHC 2397 ("*Fioralba*").

The precise facts of *Fioralba* are not relevant here, but it involved an application under s 67 of the English Arbitration Act 1996 under which a party may challenge an arbitral award on jurisdiction grounds.

After reviewing a string of previous cases, Males J's decision was in summary as follows:

1. "[I]n general, … a party is entitled to adduce evidence in a section 67 challenge which was not before the arbitrators. No doubt that is subject to the control of the Court, but speaking generally, ***t*he Court will not normally exclude evidence which is relevant and admissible**, even if it may cause prejudice to the other side -- for example, if a claimant has deliberately waited until the end of the limitation period to bring his claim and in the meanwhile the other side's key witness has died". (*Fioralba* at [29])

2. "[A] section 67 challenge is 'a full judicial determination on evidence', in this respect like any other. It is in general up to the parties … to determine the evidence on which they wish to rely, and that evidence is not limited to whatever evidence was before the arbitrators". (*Fioralba* at [30])

3. "[T]hat does not mean … that the parties' right to adduce evidence is unconstrained by the Court's rules of procedure. On the contrary those rules of procedure concern the way in which evidence is to be received and enable the Court to exercise control over the disclosure of documents, the service of evidence in the form of witness statements and, where necessary, experts' reports, and the adducing of oral evidence with cross examination". (*Fioralba* at [30])

4. "The Court does not have an unfettered discretion to exclude relevant evidence. At the same time, it is incorrect that the only ground on which the Court may do so is that the admission of new evidence would cause prejudice to the other party. However, in a section 67 case, the Court may refuse to allow a party to produce documents selectively where that would prejudice the other party. Equally, it may refuse to allow evidence which does not comply with the Court's rules for ensuring that evidence is presented in a fair manner. That too is a form of prejudice which may not be capable of being remedied. Where that is the position, it may not be enough to say that the opposing party can make submissions as to the weight of the evidence. Fairness may require that the evidence is not adduced at all" (emphasis added). (*Fioralba* at [32])

In *Fioralba*, most of the new evidence on which the claimant sought to rely appeared to have been available to it in the arbitration. The arbitral tribunal had made an order for full disclosure with which the claimant had deliberately failed to comply. The fresh evidence the claimant now sought to present still did not represent full disclosure, and basic documents remained outstanding.

Males J concluded that it would cause the defendant "irremediable prejudice" if it allowed the claimant to rely on a selection of documents without giving full disclosure as ordered by the tribunal. The claimant was, therefore, not allowed to adduce the fresh evidence.

While the relevant statutory scheme in England and Singapore obviously differs, Males J's analysis arguably strikes the appropriate balance between the two ends of the spectrum. It accords appropriate significance to the fact that a challenge on the tribunal's jurisdiction does not operate by way of an appeal by holding that the **starting point** is that a party generally has the right to adduce fresh evidence.

At the same time, the Court retains control, not merely through the weight of the evidence or costs orders, but by considering the entire factual and procedural matrix carefully, including the manner in which the fresh evidence is presented, to determine whether the admission of fresh evidence would cause irremediable prejudice to the other party. This "safety valve" prevents any abuse of process.

Indeed, the two ends of the spectrum may not be as far apart as they might appear at first blush.

*Sanum* may be understood in a different context. Leow JC was neither fashioning an immutable nor exclusive test to be applied in every case. Rather, *Sanum* could be understood as suggesting that the Court is **entitled** to consider, among other things, the factors in the modified *Ladd v Marshall* test in an attempt to evaluate, on the facts of each case, whether it would be unfair to admit the fresh evidence.

This reading of *Sanum* would not be novel. In *WBG Network (S) Pte Ltd v Sunny Daisy Ltd* [2007] SGCA 1, the Singapore Court of Appeal considered whether the modified *Ladd v Marshall* test applied when a party, who was appealing against a Registrar's refusal to grant summary judgment, sought to adduce fresh evidence. The Court of Appeal eventually held that the Judge below was **entitled**, though not **obliged**, to employ the conditions of *Ladd v Marshall* to help her decide whether or not to exercise her discretion to admit or reject the further evidence.

Similarly, in *AQZ* Prakash J offered her brief views by way of *dicta*. The learned Judge did not shut out the possibility of the Court retaining residual discretion to refuse admission of fresh evidence in limited circumstances.

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In conclusion, this note sought to reconcile the apparently conflicting positions in Singapore. It posits that the current English position may be of highly persuasive value should the same issues return to Singapore shores again.

## Notes

1 See *Tan Boon Heng v Lau Pang Cheng David* [2013] SGCA 48 at [42] per Chao JA.

2 Kelvin Poon *et al*, "Singapore Court Reviews Investment Arbitral Tribunal's Decision on Jurisdiction: What Standard Should Apply As to Evidence?", Kluwer Arbitration Blog (4 February 2015); available at: <http://kluwerarbitrationblog.com/blog/2015/02/04/singapore-court-reviews-investment-arbitral-tribunals-decision-on-jurisdiction-what-standard-should-apply-as-to-evidence-2/)>.

3 See *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 at [35] per VK Rajah JA.

4 For a critique of this decision, see Nicholas Poon, "Issues and Problems in Enforcing Arbitral Awards Across Multiple Jurisdictions: *Astro v Lippo*, the Hong Kong edition", Singapore Law Blog (9 April 2015); available at: <http://www.singaporelawblog.sg/blog/article/103)>.

This article explores the approach taken by Singapore Courts in developing the doctrine of natural justice in international arbitration, as well as the approaches taken by Courts in Hong Kong and England and Wales. The doctrine of natural justice refers to two related principles: first, that an adjudicator must be disinterested and unbiased; and second, that parties to a dispute must be given adequate notice and opportunity to be heard. Generally, while Courts have left the door open for parties to succeed on claims of breach of natural justice in circumstances where the breach is sufficiently egregious and where it could realistically be said to have affected the tribunal's decision, they have set a high threshold for such claims.

# Natural Justice in International Arbitration

## Introduction

This article will explore the approach taken by Singapore Courts in developing the doctrine of natural justice in international arbitration, as well as the approaches taken by Courts in Hong Kong and England and Wales, both of which have also implemented the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"). Generally, the doctrine of natural justice is encapsulated by two distinct but related principles: first, that an adjudicator must be disinterested and unbiased (*nemo judex in causa sua*); and second, that parties to a dispute must be given adequate notice and opportunity to be heard (*audi alteram partem*).[1] Whilst there have been numerous creative attempts to push the boundaries of the doctrine of natural justice, many such attempts have failed in the face of the arbitration-friendly, pro-enforcement approach of Courts in all three Model Law jurisdictions.[2]

## Singapore

In Singapore, the statutory ground providing for the setting aside of awards for breach of natural justice can be found in s 24(b) of the International Arbitration Act (Cap 143A), which in pertinent part provides that Courts may set aside arbitral awards if "a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced". Courts have further elaborated on this in *John Holland Pty Ltd v Tokyo Engineering Corp (Japan)*[3] and subsequent case law.[4] Under *John Holland*, to succeed on a claim of breach of natural justice, a party must identify: (i) the relevant rule of natural justice claimed to have been breached; (ii) how that rule was breached; (iii) how the breach was connected to the making of the award; and (iv) how that breach prejudiced the applicant's rights.[5]

1. The rule of natural justice breached

The first prong of *John Holland* requires that the applicant identify which rule of natural justice was breached. As explained above, the law generally recognises two principles of natural justice: the right to an impartial tribunal and the right to present one's case.[6] Claimants often rely on the same set of facts as grounds for violations of both rights.

**The right to present one's case.** This encompasses not only the right to make submissions to the tribunal, but also the right to submit relevant and material evidence to the tribunal.[7] Despite wording in the Model Law suggesting that the right to be heard entails the right to fully present any and all evidence and submissions,[8] Singapore Courts have clarified that this is not the case. Rather, the right to be heard entails only a reasonable right to be heard.[9]

**The right to an impartial tribunal.** This entails the right to an unbiased tribunal. However, Singapore Courts have been cautious about its application. Arguments that the tribunal preferred one party's version of the evidence over the others' have generally been unsuccessful; as one Court has pointedly observed, no party to an arbitration has a right to have its evidence believed.[10] Also, an adverse award, in and of itself, is not evidence of bias absent some proof of improper conduct.[11]

2. How the rule was breached

This prong requires that the applicant identify the specific acts by the tribunal that resulted in a denial of natural justice. While the question of whether a specific procedural irregularity amounts to a breach of natural justice is necessarily a case-specific and inherently fact-driven matter, this is generally a difficult showing for applicants. In *ADG*, the Singapore High Court, in line with the jurisdiction's

policy of minimal curial intervention, held that tribunals have wide discretion to make procedural decisions, reasoning that the parties consented to such discretion when choosing to arbitrate under SIAC rules. However, this discretion is not unqualified; it remains subject to the requirement that it be exercised reasonably.[12]

3. Causal nexus

The third prong of *John Holland* requires that the applicant identify how the breach claimed led to the making of the award. In *ADG*, the Court formulated its task in the following terms: taking the content of the Tribunal's reasoning in reaching its award as it is, the Court was to consider how, if at all, the breach could have a causal connection with the award on that reasoning.[13] The Court went on to examine the arguments made by the tribunal, and found that the issues that the new evidence (which had been rejected by the tribunal following the close of proceedings – the breach of natural justice complained of in that case) dealt with did not form part of the tribunal's reasoning in reaching its award. Based on that reasoning, the Court in that case found that there was no causal nexus.

4. Prejudice

Finally, applicants must show that they were prejudiced by the breach identified. The test may be formulated as follows: was the breach merely technical or inconsequential, or, was the arbitrator, as a result of the breach, denied the benefit of evidence and arguments that had a real as opposed to fanciful chance of making a difference to deliberations?[14] Applicants must show that the new evidence or arguments had a real chance of making a difference to the award, with the caveat that the Court will not require proof that the new evidence or arguments would necessarily make a difference to the award as that would entail taking the place of the tribunal and conducting a review of the substantive merits of the award.[15] In *ADG*, there was no prejudice as the new evidence would not have affected the tribunal's reasoning.

The *John Holland* test is applied against the backdrop of Singapore's policy of minimal curial intervention in evaluating claims for breach of natural justice[16] – the arbitral tribunal is granted a wide margin of deference before a Court will intervene with a finding of breach of natural justice. As V K Rajah JA (as he then was) explained in *Soh Beng Tee*, aggressive curial intervention would encourage unmeritorious challenges and lead to "indeterminate challenges, indeterminate costs and indeterminate delays".[17] Accordingly, meeting the *John Holland* test and succeeding on a claim of breach of natural justice is generally difficult in Singapore.

## Hong Kong

In Hong Kong, the law on breach of natural justice is set out in s 81 of the Arbitration Ordinance (Cap 609), which gives effect to art 34 of the Model Law in Hong Kong. The leading case in Hong Kong discussing this area of law is the Court of Appeal's decision in *Grand Pacific Holdings Ltd v Pacific China Holdings Ltd (No 1)*.[18] Similar to other Model Law jurisdictions, it is difficult to prove breach of natural justice in Hong Kong. Unlike Singapore, Hong Kong Courts have not elaborated on any specific test for breach of natural justice, instead opting to resolve the issues based on the facts in each case. However, as *Grand Pacific* made clear, arbitral tribunals have generally broad discretion to manage the case, and accordingly the threshold for succeeding on challenges based on breach of natural justice to procedural decisions taken by tribunals is high.

One potentially important nuance in Hong Kong law as compared to Singapore law is that, in rare cases, Hong Kong Courts may set aside awards for breach of natural justice even where no causal nexus or prejudice has been shown. In Singapore, the questions of causal nexus and prejudice form part of the aforementioned *John Holland* test of whether a breach of natural justice has been found. In *Grand Pacific*, however, Hong Kong Court of Appeal seemed to examine the question of breach separately from the consideration of whether the Court should exercise its discretion to set the award aside. Prejudice and causal nexus are relevant only at this stage: the Court of Appeal stated that where a violation of natural justice was found, a Court may nonetheless refuse to set aside an award if satisfied that the outcome "could not be different".[19] However, even where a causal nexus or prejudice is not found, the Court may still exercise its discretion and set aside the award, although such cases should be rare and the Court should be satisfied that the breach was sufficiently egregious and serious to justify a setting aside.[20] Accordingly, Hong Kong Courts seem to have a degree of wiggle-room to set aside awards for egregious violations of natural justice, even if it is clear to all parties that the outcome of the arbitration would have been the same anyway.

## England and Wales

In England and Wales, the test for breach of natural justice is set out in s 68 of the Arbitration Act 1996 (c 23) (UK) (the "English Arbitration Act"). Section 68(1) permits parties to challenge an award on the basis of a "serious irregularity", defined as an irregularity that "has caused or will cause substantial injustice to the applicant".[21] In addition, the irregularity must fall within the closed list of categories set out in s 68(2), which includes the following: (i) failure by the

tribunal to comply with s 33;[22] (ii) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties; and (iii) failure by the tribunal to deal with all the issues that were put to it. Accordingly, s 68 involves a two-stage investigation: (a) whether there has been an irregularity of at least one of the nine kinds identified in s 68(2)(a) to (i); and (b) whether the incidence of such irregularity has caused or will cause substantial injustice. [23]

Where there have been allegations of breach of natural justice, English Courts have generally only intervened where the substance and nature of the injustice went well beyond what could reasonably have been expected as an ordinary incident of arbitration. In *London Underground Ltd v Citylink Telecomms Ltd*,[24] the English High Court held that the requirement of serious irregularity under s 68 "imposes a high threshold" and that the requirement was "designed to eliminate technical and unmeritorious challenges".[25] Similarly, the English High Court in the more recent case of *ED & F Man Sugar Ltd v Belmont Shipping Ltd*[26] observed that s 68 was "designed as a long-stop, only available in extreme cases where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected".[27] The reason for imposing a high threshold of substantial injustice is perhaps best explained by the Court in *Bulfracht, viz*, "[t]he introduction of s 68 reflects the emphasis of the 1996 Act both on the objective of finality and on the desirability of the courts having a residual power to protect the parties against the unfair conduct of the arbitration".

In essence, the English test of substantial injustice focuses on the issue of whether the arbitrator had come by inappropriate means to one conclusion under circumstances where had appropriate means been adopted, he might realistically have reached a conclusion favourable to the applicant.[28] The test is not what would have happened had the matter actually been litigated – to apply such a test would be to ignore the fact that the parties had agreed to arbitrate instead of taking the matter to litigation.[29]

English Courts have also considered further the application of the substantial injustice test to the s 68(2)(a) natural justice right to present one's case.[30] Following a review of case law, the Court in *London Underground* arrived at the following five general principles relevant to the application of substantial injustice to s 68(2)(a). First, Courts and parties are to bear in mind that the underlying principle is that of fairness and natural justice. Second, there must be a "sensible balance" between the finality of an award and the residual power of a Court to protect parties against unfairness in the arbitration. Third, tribunals are generally required to make its decisions based on the cases advanced by the parties and that the parties have notice of. Fourth, in relation to findings of fact, tribunals should give parties the opportunity to address them on proposed findings of major areas of material primary facts which have not previously been raised,[31] and if the tribunal considers that the parties may have missed the real point or if it is impressed by a new point that has not previously been raised, then it has a duty to put the point to them and give them an opportunity to deal with it, either by calling further evidence or by addressing arguments on the facts or the law.[32] Finally, whether there is a procedural irregularity and whether it is serious is a matter of fact and degree, taking into account the substance of the arbitration and its conduct viewed as a whole.[33]

Similar to Singapore's approach, the element of causation is an essential prerequisite to ground a successful setting aside application in England. As Robert Merkin has observed, "... **if the court is satisfied that** the applicant had not been deprived of his opportunity to present his case properly, and that **he would have acted in the same way with or without the alleged irregularity, then the award will be upheld. By contrast, if it is possible that the arbitrator could have reached the opposite conclusion had he acted properly, there is potentially substantial injustice**" (emphasis added).[34] Accordingly, in both England and Singapore, an applicant must prove that there has been substantial or real prejudice caused by the alleged breach of natural justice, as opposed to merely asserting procedural breaches of an "arid, technical or trifling nature".[35] It must be established, at the very least, that the breach of the rules of natural justice "actually altered the final outcome of the arbitral proceedings in some meaningful way".[36]

The English standard for breach of natural justice differs from Singapore's in two important ways. First, while applicants attempting to set aside an arbitral award under the auspices of International Arbitration Act generally have leeway, subject to local precedent, to bring up any claim that could potentially be considered a breach of natural justice, applicants attempting to do the same under the English Arbitration Act will have to ensure that their claim fits into any of the closed categories of irregularities expressly delineated in s 68.

It would also appear that the English Arbitration Act is more extensive than the Singapore equivalent, insofar as the former allows parties to set aside the award on grounds other than the twin principles of natural justice. [37]

Second, the "substantial injustice" formula adopted in s 68 of the English Arbitration Act is higher than the threshold of 'prejudice' adopted in s 24(b) of the Singapore International

Arbitration Act. In this regard, the Singapore Court of Appeal has pointed out that "... Parliament, in steering away from the 'substantial injustice' formula adopted in the UK Arbitration Act 1996, had intended to set a lower bar to establish a remediable 'prejudice'".[38] In theory at least, it would seem easier to succeed on a claim for breach of natural justice in Singapore as compared to under English law.

## Conclusion

It would appear that regardless of jurisdiction, a Court's approach to allegations of breach of natural justice is governed by the twin pillars of arbitration: party autonomy and procedural fairness. While Courts have left the door open for parties to succeed in circumstances where the breach claimed is sufficiently egregious and serious and where the breach could realistically be said to have affected the tribunal's decision, they have been wary of offering parties a second bite of the cherry by allowing them to canvass the merits of their cases afresh and accordingly have set a high threshold for breach of natural justice claims. As was observed in *Soh Beng Tee*, natural justice does not only protect the interests of the unsuccessful party in the arbitration; indeed, refusing to vacate an award based on mere technicalities also forms part of the concept of fairness.[39] A high threshold is imposed for good reason; a party seeking to set aside an award cannot rely on vague and amorphous notions of procedural injustice.

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** The views expressed are the authors' own and are not to be taken to reflect the views of their respective employers.

**Notes**

1 *Gas & Fuel Corporation of Victoria v Wood Hall Ltd & Leonard Pipeline Contractors Ltd* [1978] VR 385 at 396, cited with approval in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR (R) 86; [2007] 3 SLR 86 ("*Soh Beng Tee*").

2 See eg *AKN v ALC* [2015] SGCA 18, affirming the pro-arbitration approach in Singapore that any grounds for challenges to awards were to be narrowly construed.

3 [2001] 1 SLR(R) 443 ("*John Holland*") at [18].

4 See eg *Soh Beng Tee; LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125; ADG v ADI [2014] SGHC 73 ("ADG").

5 *John Holland* at [18].

6 *Soh Beng Tee* at [43].

7 See eg *ADG* at [102].

8 Article 18 of the Model Law provides that each party must be allowed a "full opportunity" to present its case.

9 *ADG* at [103].

10 *TMM Division v Pacific Richfield* [2013] 4 SLR 972 at [120].

11 *PT Central Investindo v Wongso* [2014] 4 SLR 978.

12 What is reasonable here is a fact-driven analysis, and Singapore Courts have looked at the substance of the procedural rulings in question and examined whether they did in fact result in a failure of due process. Courts have also emphasised that mere technical or incidental breaches of arbitral institutional rules do not in themselves amount to breaches of due process; rather, Courts are to examine whether the "elemental or fundamental aspects" of the right to be heard have been violated (See *ADG* at [116]).

13 *ADG* at [129].

14 *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [54].

15 *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [54].

16 *Soh Beng Tee* at [92] - [93].

17 *Soh Beng Tee at* [62].

18 [2012] 4 HKLRD 1 ("*Grand Pacific*"). Note that this decision was based on the now-repealed Arbitration Ordinance (Cap 341).

19 *Grand Pacific* at [105].

20 *Ibid.*

21 Section 68(2) of the English Arbitration Act.

22 Section 33(1)(a) of the English Arbitration Act provides that the tribunal shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent.

23 *Bulfracht (Cyprus) Ltd v Boneset Shipping Co* [2002] EWHC 2292 ("*Bulfracht*").

24 [2007] EWHC 1749 ("*London Underground*").

25 *London Underground* at [22].

26 [2011] EWHC 2992 ("ED & F Man Sugar").

27 *ED & F Man Sugar* at [20].

28 *London Underground* at [47].

29 Departmental Advisory Committee (DAC) Report at [280].

30 Section 68(2) of the English Arbitration Act.

31 Note, however, that tribunals have an autonomous power to make findings of fact based on inferences from the primary facts. Tribunals are not required by natural justice to refer back to the parties for further submissions for every single inference of fact it intends to draw. See *London Underground* at [37].

32 *Zermalt Holdings SA v Nu-Life Upholstery Repairs Ltd* [1984] 2 EGLR 14 at 15; *Interbulk Ltd v Aiden Shipping Co* (The "*Vimeira*") [1984] 2 Lloyd's Rep 66 at 75 and 76.

33 *London Underground* at [37].

34 Arbitration Law (Informa UK Limited, Looseleaf Ed, 1991, 27 November 2006 release) at [20.8].

35 *Soh Beng Tee* & *Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [91]; *Coal & Oil Co LLC v GHCL Ltd* [2015] SGHC 65 at [51].

36 *Soh Beng Tee* at [91].

37 See English Arbitration Act, ss 68(2)(b), (e), (f), (h), and (i).

38 *Soh Beng Tee* at [91], followed in *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [52].

39 *Soh Beng Tee* at [65(b)].

The Ethics Committee, a committee of the Council of the Law Society, is tasked with providing guidance to members on their ethical obligations. Members can submit a written enquiry to the Committee through the Representation and Law Reform Department at represent@lawsoc.org.sg. For detailed guidelines on enquiries to the Ethics Committee, please refer to the PDR 2013, para 62, available at the Ethics Portal section of the Law Society's website at http://www.lawsociety.org.sg/forMembers/ResourceCentre/EthicsPortal.aspx

A member who encounters difficulty in a specific case and needs guidance should write to the Committee for a specific opinion. The Committee and the Law Society are not liable to any member who does or omits to do anything based on this article.

# Transfer of Client Correspondence – Whose Obligation is it?

1. Law Firm AB approached the Ethics Committee to seek guidance on whether a lawyer leaving a law practice with an intention to practice with another law practice ("Exiting Solicitor") is under a duty to provide to his previous law firm copies of all relevant correspondence and associated attachments from his Microsoft Outlook files relating to client matters that were under his care and supervision during the course of his employment with the firm. The Committee expressed the view that an Exiting Solicitor has an ethical obligation to release all relevant client correspondence, including electronic messages and associated attachments, to his previous law firm under such circumstances.

2. The salient facts presented to the Committee were as follows:

   a. Law Firm AB was formed by its partners Lawyer A and Lawyer B. Lawyer B left Law Firm AB and started his practice with another law firm. Law Firm AB hosted its e-mails on an external server. Such e-mails were downloaded directly by individual users from the external server onto individual computers and saved (including by Lawyer B) in Microsoft Outlook as ".pst files" ("Outlook Data Files").

   b. When Lawyer B left Law Firm AB, he took his Outlook Data Files with him, and only left some of his e-mails on the external server. The physical files that were retained by Law Firm AB did not contain a complete record of e-mail correspondence. Accordingly Law Firm AB informed the Committee that it faced difficulties in following-up with its existing clients who Lawyer B previously acted for.

   c. Law Firm AB sought the Ethics Committee's views on whether it could request Lawyer B to provide it with a complete set of his Outlook Data Files containing all his e-mail correspondence with his clients while he was with Law Firm AB.

3. The Committee reviewed the material facts presented and provided the following guidance.

4. Law Society's Guidance Note 2013, para 10 on "Guidelines for Handling of Clients' Files When a Solicitor Leaves a Law Practice to Practise in Another Law Practice" ("GN 10") applies to both the law practice (the "Current Law Practice") and the solicitor (the "Exiting Solicitor") who leaves the Current Law Practice with the intention to practice as an employee or member of another law practice (the "New Law Practice") and sets out guidelines on how the file(s) of a client(s) (the "Client") of the Current Law Practice being handled by the Exiting Solicitor should continue to be managed when the Exiting Solicitor intends to leave the Current Law Practice. The following paras of the GN 10 are of particular relevance:

   a. Para 4.1: The primary consideration in all cases is that the Exiting Solicitor and the Current Law Practice must act in the best interests of the Client and ensure that the Client's interests are not prejudiced by the Exiting Solicitor's leaving the Current Law Practice.

   b. Para 4.5: The Exiting Solicitor must comply with all such contractual, fiduciary and confidentiality obligations that the Exiting Solicitor may owe to the Current Law Practice despite leaving the Current Law Practice.

   c. Para 7: The Exiting Solicitor must not remove lists of Clients' names and addresses or other proprietary information from the Current Law Practice.

   d. Para 10: The Exiting Solicitor must not take the Client's file to the New Law Practice or otherwise undermine the existing solicitor-client relationship between the Current Law Practice and the Client in any way.

5. Although GN 10 does not define the scope of the word "file", it may be inferred that the word "file" includes "electronic mail" and documents transferred via the internet based on GN 2013, para 1 on Ethics and Information Technology ("GN 1") and GN 2013 Para 3 on Storage of Documents in Electronic Form ("GN 3"). Both GN 1 and GN 3 set out detailed guidelines for practitioners in using information technology as a medium to communicate with clients. Therefore, documents constituting a Client file must necessarily include the electronic messages exchanged between the Current Law Practice and the Client or third parties. Further, sub para 4 of GN 1 provides that the Current Law Practice is under an obligation to maintain a record of all outgoing and incoming e-mails sent under a client's file whether as a paper record on file or stored by electronic means.

6. Accordingly, Law Firm AB is under an obligation to maintain a record of all communication with its clients, including any electronic e-mail or attachments associated with such e-mails. An Exiting Solicitor is, therefore, not entitled to remove any information that may constitute proprietary information of Law Firm AB or remove any client file in any manner that will undermine the existing solicitor-client relationship between Law Firm AB and its clients or prevent Law Firm AB from discharging its obligations under GN 1.

7. Further, r 41(b) of the Legal Profession (Professional Conduct) Rules provides that an outgoing lawyer is under an ethical obligation to release to the incoming solicitor all correspondence including electronic mails as may be necessary to enable the incoming solicitor to take over the matter. The principle underlying r 41(b) is applicable here and suggests that in order for Law Firm AB to assign a new lawyer to effectively service its clients who were previously advised by Lawyer B, it is necessary for Law Firm AB to have access to all relevant correspondence that transpired between Lawyer B and those clients or relevant third parties.

8. Therefore, the Exiting Solicitor has an ethical obligation to release all relevant client correspondence, including electronic messages and associated attachments, to his previous law firm based on the reasons stated above. The above is in addition to such contractual and other obligations as may be imposed by law.

▶ **Ethics Committee**
The Law Society of Singapore

# Enforcement of Foreign Arbitral Awards and Foreign Judgments in Thailand

## Is an Arbitral Award Rendered Outside Thailand Enforceable in Thailand?

Arbitrations involving Thai parties often have their seat outside of Thailand. In case a Thai party is the award debtor and does not comply with the directions given in the award, the issue of enforcement comes up inevitably.

Chapter 7 of the Thai Arbitration Act B.E. 2545 (2002)[1] addresses the issues linked with the recognition and enforcement of arbitral awards in Thailand. Section 41 of the Thai Arbitration Act provides that an arbitral award made in a foreign country will only be enforced in Thailand if it is subject to an international convention, treaty, or agreement to which Thailand is a party, and then only to the extent that Thailand agrees to be bound.

Since Thailand is a party to both the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention")[2] and the Geneva Convention 1927 ("Geneva Convention"), foreign arbitration awards rendered in countries that are signatories to the New York Convention or the Geneva Convention are recognised and enforceable in Thailand, subject to certain conditions set out in the Thai Arbitration Act that shall be dealt with below.

## What are the Procedural Requirements for a Foreign Award to be Enforceable in Thailand?

At present, for enforcement purposes of arbitral awards, there is no distinction between domestic and foreign awards in Thailand. So enforcing an arbitral award rendered in Thailand and an award made in an overseas jurisdiction are subject to the same legal provisions, although foreign awards must meet certain basic threshold qualifications (s 41 Arbitration Act).[3]

The first condition is that the award must be made in writing and signed by the arbitral tribunal and stating the reasons for the decision. The date and the place of arbitration must also be stated in the award if the arbitral tribunal consists of more than one arbitrator. The signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature shall also be stated in the award. And finally, copies of the arbitral award must have been served on the parties of the arbitration (s 37 Arbitration Act).

## What is the Process and Procedural Steps for Enforcing an Arbitral Award in Thailand?

There is sometimes a misconception among foreign investors and their counsel that enforcement proceedings of arbitral awards in Thailand are merely a purely "administrational matter" and something like an "automatic" process. This is however not the case. The procedure for enforcing arbitral awards in Thailand follows normal Thai Court practice.

The process of enforcement is initiated by the filing of an application with the competent Court for a judgment recognising and enforcing the award. The Court must then, without delay, promptly examine and inspect the application to ensure that it fulfills all necessary requirements for its enforcement. After filing the petition for enforcement of the award, the defendant has a right to file an objection to the petition. Thereafter the hearing for presentation of witnesses/evidence in support of the petition or objection is then scheduled and conducted. Needless to say that these proceedings require usually some time and don't have any guaranteed outcome.

The Court shall then render judgment on the award's enforceability provided the opposing party has requested an opportunity to challenge the application.

After the enforcement judgment has been obtained from the Thai Court, the award may be enforced in the same way like any other Thai judgment with the assistance of the Thai Legal Execution Department.

When filing the petition for enforcement of the award, the application must also be submitted with the following documents:

- An original or certified copy of the arbitral award;
- An original or certified copy of the arbitration agreement;

- A certified Thai translation of the award and the arbitration agreement.[4]

## What is the Grounds for Refusing Enforcement of a Foreign Arbitral Award?

### *Grounds Relating to a Time Bar*

The first item to observe with regard to the enforcement of the award is a time bar: According to s 42 Arbitration Act, a party seeking enforcement of an arbitral award must file a petition to the Thai Court holding jurisdiction no later than three years from the date the award first became enforceable.

### *Grounds Relating to the Arbitration Agreement (Section 43(1) Arbitration Act)*

According to s 43(1) Arbitration Act, a ground for refusal is present if the party to the arbitration agreement is under some incapacity under the laws that are applicable to such party and therefor the arbitration agreement becomes voidable.

The second ground that may be invoked to prevent enforcement of the award under s 43(2) Arbitration Act is present, when the arbitration agreement is not binding under the law of the country agreed to by the parties. Absent such specification by the parties, the issue whether the arbitration agreement is binding will be determined by Thai laws according to s 43(2) Arbitration Act.

### *Grounds Relating to the Arbitration Proceedings (Section 43(3), (5) Arbitration Act)*

If a party has not been properly notified of the appointment of arbitrators, it is impossible for such party to adequately protect their own interests in the proceedings. Therefore, s 43(3) Arbitration Act provides the Thai Court the opportunity to examine whether the parties have been notified of the appointment of the arbitrators and the arbitration proceedings and if this is not the case, to refuse enforcement.

Likewise, s 43(5) Arbitration Act constitutes a ground for refusal of the enforcement, if the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties, or, if not otherwise agreed by the parties, in accordance with the Thai Arbitration Act.

### *Grounds Relating to the Arbitral Award (Section 43(4), (6) Arbitration Act)*

Section 43(4) provides a ground for enforcement refusal if the Thai Court has concluded that the matter that the arbitral tribunal decided was beyond the scope of the arbitration agreement.

In addition, if a Court of the country where the award was rendered has set the award aside or suspended it, then according to s 43(6) Arbitration Act enforcement may be refused by a Thai Court.

### *Grounds Established by the Court's Own Initiative (Section 44 Arbitration Act)*

Section 44 may come as a surprise to a common law trained counsel. Because s 44 establishes two additional grounds that give the Thai Court the right to refuse the enforcement of an award, even though the parties may not even have pleaded these grounds. The first ground relates to the lack of arbitrability of the underlying dispute; the second ground refers to a violation of Thailand's "public policy". Obviously, neither is there a clear cut definition of what exactly constitutes "Thai Public Policy" nor is it entirely predictable when a violation of such public policy will occur.

It is not easy to make reliable predictions regarding the length of time required for the enforcement proceedings, but normally enforcement proceedings can take anywhere between 8 to 18 months (in some exceptional cases longer) to obtain the lower Court's judgement, depending on the complexity of the case (eg number of witnesses introduced etc), which can then be – under certain conditions – further appealed directly to the Supreme Court, which may lead to further delays.

### *Appeal Proceedings*

According to s 45 of the Arbitration Act, an order or judgment of a Court under the Arbitration Act concerning the recognition and enforcement of the award shall not be appealed, except where:

1. The recognition or judgment of the award is contrary to public order or good moral;

2. The order or judgment is contrary to the provisions of law relating to public order or moral;

3. The order or judgment is not in accordance with the arbitral award;

4. One of the Judge who has tried the case gave a dissenting opinion in the judgment; or

5. It is an order on provisional measures under s 16 Arbitration Act.

An appeal against an order or judgment under the Arbitration Act shall be made to the Supreme Court or the Supreme Administrative Court, as the case may be. Appeals can also take up to two years to be completed.

### *Costs*

The Thai Arbitration Act does not contain any specific provisions concerning recovery of costs when applying for enforcement of a foreign arbitral award. Section 46 of the Thai Arbitration Act only states that any fees and expenses pertaining to arbitral proceedings shall be included in the final award by the arbitral tribunal. In the absence of a specific agreement on costs of the enforcement between the parties, a party may file a motion to the competent Thai Court requesting allocation of costs, as permitted under the Thai Civil and Commercial Code.

## How Can Foreign Court Judgments Be Enforced in Thailand?

Before parties start to commence legal proceedings against a Thai party abroad, they often wonder what is more advantageous for them in terms of enforcement, ie proceedings in a foreign Court or arbitration proceedings? The answer is very straightforward.

Currently, Thailand doesn't have any specific legislation addressing the recognition and enforcement of foreign judgments by domestic Courts. Thailand is also not a party to any bilateral or multilateral conventions of enforcement of foreign judgments, by which a foreign Court judgment may be entitled to recognition and enforcement in Thailand.

Consequently, foreign judgments cannot be enforced in Thailand. A new trial based on the merits must be initiated in Thailand in which the foreign judgment may only be submitted as evidence. Therefore, dispute resolution clauses with Thai legal entities should either stipulate that Thai Courts are in charge or that the dispute is to be decided by arbitration, but never through any courts outside of Thailand to avoid incurring unnecessary legal costs and a repetition of the trial in Thailand.

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**Notes**

1 An English version of the Thai Arbitration Act is available online at: <http://www.thailawforum.com/laws/Arbitration%20Act.pdf>.

2 No reservations were entered at Thailand's time of accession to the Convention.

3 There is also no longer any requirement for stamp duty to be paid on an award in order for it to be enforceable in Thailand.

4 The translation of the arbitral award and the arbitration agreement in Thai language must be made by a translator who was sworn under oath before the Court or the official or the person having power to accept the oath, or who has made an oath to, or represented by, the official authorised to certify the translation or by a diplomatic delegate or the Thai consul in the country in which the award or the arbitration agreement was made.

As the representative body for young lawyers in Singapore, the Young Lawyers Committee ("YLC") focuses on issues relevant to those new to legal practice. Stay tuned to this monthly column for useful tips and advice, features and updates on YLC's social and professional events.

# Amicus Agony

Dear Amicus Agony,

I am a junior associate in a local firm. I am tempted to move to an international firm that offers 30 per cent more pay. But I am afraid my lack of experience will hamper my performance there. What is your advice?

Associate Marnee Wo Ai Qian

Dear Marnee Wo Ai Qian,

A lot of bright young associates like you receive calls from recruiters. The *Law Gazette* has some tempting classifieds that may make you wonder "since I am already clocking 14-hour days in this local firm, why not do the same in exchange for a few thousand more dollars". Generally you are expected to be more independent in an international firm. The structure is flatter, and the staffing for each matter is leaner. Thus you need to ask yourself if you are able to scale a steep learning curve by yourself.

That being said, there are international firm partners that are willing to provide more extensive training to juniors. It is best to find out more from the partners themselves or the associates who are already working for those partners.

Amicus Agony

Dear Amicus Agony,

I am practising litigation and am considering a switch to corporate practice. I hear it's easier to make a switch from litigation to corporate practice, but not vice versa. Any thoughts?

Versatile-and-confused Associate

Dear Versatile-and-confused Associate,

Based on anecdotes, it appears that the relative ease of the switches are as you described.

It is difficult to generalise because both litigation and corporate practices are within themselves quite diverse. The real question is what do you think you can be committed to? Excellence demands commitment and focus. Actually, the human environment plays a much larger part in sustaining your drive than the work you do. Find a workplace filled with passionate and skillful people and in time you will find yourself pondering over more fulfilling questions.

Amicus Agony

Young lawyers, the solutions to your problems are now just an e-mail away! If you are having difficulties coping with the pressures of practice, need career advice or would like some perspective on personal matters in the workplace, the Young Lawyers Committee's Amicus Agony is here for you. E-mail your problems to communications@lawsoc.org.sg.

# Dawn Raids: Survival Tips and Pre-emptive Action

Last year's Government raid on Mercedes-Benz in China was a stark reminder of the risks that companies face as regulatory regimes continue to multiply across numerous jurisdictions. Unfortunately, the first time many organisations become aware they are under investigation is when the authorities arrive on their doorstep. Known as corporate dawn raids, these unannounced visits from regulatory or enforcement authorities get their name from the Government investigators' habit of turning up at the beginning of the business day, when companies are likely to be least prepared for the unexpected.

Armed with warrants, they can and do arrest company officials and take away information not only in the form of paper files, but also electronic evidence stored on computers, servers and other digital devices. Given the impact on business, severe penalties and reputational damage associated with corporate wrongdoing, companies need to be prepared for a raid. They should also take proactive steps to detect unlawful behaviour ahead of a knock on the door from the authorities.

## How to Handle a Raid

**Alert Management and Legal to the arrival of authorities.** It is always advisable to ask the investigators to wait for the company's lawyers to arrive, as they will check on the lawfulness and scope of the warrant/search order. Also, call in an IT or forensic technology consultant who can shadow the investigators.

**Ensure internal communications promote compliance with investigators**.
The obstruction and failure to comply with properly authorised investigators carries the risk of hefty fines and imprisonment. Employees should stay calm, not answer questions beyond scope or comment outside of company-related questions.

**Do NOT delete data.** This leaves a trace and can lead to uncomfortable inquiries, expansion on the scope of electronic data collections, or repeated collections. It is vital to ensure all employees are aware of their legal obligations. For example, computers should not be turned off because investigators may require access to recently used RAM to check on data copied to clipboards or downloaded.

**Monitor investigators**. Organisations should ensure investigators are sticking to the scope of investigation and following proper procedures to preserve the integrity of evidence. The powers of the authorities to enter premises and how they copy relevant information vary. Companies should always seek local legal advice on how to respond in each case.

**Note what investigators are searching for and on which devices.**
With the help of a computer forensic expert, it is possible to replicate what the investigators copy either during or immediately after the raid. Business continuity is important – negotiate with investigators and ask whether they need to seize whole computers and take servers offline. Areas of potential relevance can be discussed and targeted, as can procedures for handling known privileged documents.

## The Aftermath

The sooner a company is able to start reviewing what the authorities have collected, the sooner it can consider its legal exposure and strategy for handling the investigation. A legal technology provider can set up a document review tool that allows the company to rapidly analyse documents seized by regulators. The millions of e-mails now available will need to be automatically filtered and prioritised using the latest technology so that the company can quickly assess potential liability and prepare a response.

## Proactive Compliance Monitoring

Electronically stored information ("ESI") such as e-mail is a source of evidence often targeted by regulators. In line with guidance from authorities, it is becoming increasingly advisable for companies to review their electronic communications and information as part of their internal compliance monitoring and audit process. Companies that carry out such internal reviews of their ESI to detect unlawful activity will be better placed to defend themselves.

▶ **Kate Chan**
Managing Director APAC
Kroll Ontrack

* Kate Chan is a Regional Managing Director in Kroll Ontrack's Asia Pacific Legal Technologies practice. Her over eight years of experience in Computer Forensics and Ediscovery includes successfully advising clients from Greater China, Taiwan, Singapore, and Japan on electronic evidence issues arising from cross border litigation, regulatory review, and internal investigations. Her practice focuses on discovery tools and technology, litigation preparedness, large case management, and compliance. Prior to joining Kroll, Kate was a lawyer practising in New York and an entrepreneur in a technology start-up with focus in Asia.

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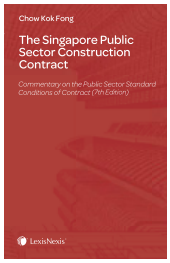


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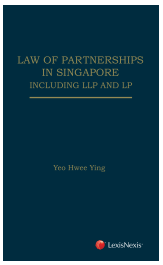


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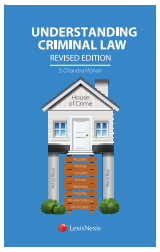


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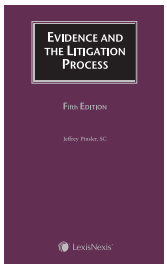


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# ANOTHER Career

"

BEING HAPPY IS NOT JUST ABOUT BEING A LAWYER. IT IS ABOUT HAVING JOY, PEACE, FREEDOM, SELF-FULFILMENT AND MEANING IN LIFE

"

After spending 18 years as a lawyer and facing the prospect of turning 50 next year, I am seriously thinking about the future. I have worked a total of three jobs in my working life, all in the legal profession. I work very hard, easily clocking 12 hours every day including many weekends as well. I look at some of the senior members of the Bar, old, frail and still slowly plodding through law practice. I am clear that I am not going to be like them in the twilight of my practice or die doing my job.

So, it is time for a rethink. Lawyering has sucked a lot out of me. It has taken time away from myself, the Wife, my parents and loved ones. And, it does not get easier. The very heavy workload, unreasonable and demanding clients, and the work following me on every vacation just makes me feel that I have reached the limit.

Don't get me wrong. I love being a family lawyer. At the same time, I would like to be a happy one with a proper, more balanced life. Being happy is not just about being a lawyer. It is about having joy, peace, freedom, self-fulfilment and meaning in life. "Why work so hard when we do not have any dependants to take care of?" I asked the Wife recently. She agreed.

So it is time for a change. I worked in a top law firm in Singapore for six years and I have run my own firm for the last 12 years. What's next? I am a firm believer that we can have more than a couple of careers in our lifetime. Running a business in Singapore is very tough. High rental, staff salaries, employee management, difficulty in finding not only work but good clients, being subject to robust, ever changing Court processes and being subject to the constant uncertainties of the economy just gets too much to handle. Taking a break to rest are the oft suggested solutions. Sometimes that is not the best solution if you still have to take care of work during the break or the thought of going back to work takes away the thrill of the break. Like a friend said, it takes time to relax and get into holiday-mode during a vacation, and just when you are starting to enjoy yourself, it is time to pack up and go home.

With all these thoughts in mind, I went to the United States to attend the annual collaborative professionals forum last month. The international collaborative professionals community is closely knit and we enjoy sharing information and resources with one another. We inspire and encourage each other. As a collaborative lawyer, this annual reunion is a recharging and grounding process to remind me of the value of collaborative practice.

Many of the American collaborative lawyers have made the switch from litigation to full time collaborative practice and mediation. One of them has even successfully taken it beyond family law to commercial law. I asked how they made the switch. "I made a commitment to do collaborative work only. I stopped taking on new litigation work in the last two years and slowly moved away from litigation work," was the common reply from many I spoke to. Making a commitment and taking the risk was what these lawyers did.

Wearing the different hats of a litigation lawyer, mediator and collaborative lawyer all at the same time is not easy, is an observation made by the American lawyers. In our local scene, this is why we are still mainstream litigation lawyers despite the call and push for collaborative law and mediation. Most lawyers are unable to fully embrace or shift to alternate dispute resolution ("ADR") methods.

For an ADR culture to thrive in Singapore, ADR has to be introduced and used before disputants even enter the doors of the Courthouse. A pre-requisite for filing a law suit should be attempting mandatory mediation or collaborative law. We need to go beyond the training of ADR practitioners and instead, create greater awareness among members of the public and potential litigants of how collaborative law can benefit them. The Ministry of Law, the Courts, ADR practitioners and other stakeholders all have a larger part to play to make ADR the main dispute resolution method in Singapore and to make it a viable profession in Singapore amongst our lawyers.

The founding father of collaborative law, Stu Webb, made a declaration 25 years ago on Valentine's Day when he wrote this letter to Justice Keith of the Minnesota Supreme Court:

Dear Sandy:

I met you at a party at Steve & Marilyn Erickson's several year s ago. I was interested in your involvement with mediation. I also heard you talk last November at the Conference for Dispute Resolution Practitioners Seminar.

I, too, took Steve and Marilyn's mediation training and have done mediation, mediation wrap-ups and, generally, have been vitally interested in exploring alternative dispute resolution in all its manifestations.

I think I've come up with a new wrinkle that I'd like to share with you. One of the aspects of mediation that I feel is a weakness is that it basically leaves out input by the lawyer at the early stages (sometimes that's an advantage!). By that I don't mean **adversarial**, contentious lawyering, but the analytical, reasoned ability to solve problems and generate creative alternatives and create a positive context for settlement. Of course, these attributes of good lawyering are not utilized greatly in the usual adversarial family law proceeding either.

But you and I have both experienced, I'm sure, those occasional times, occurring usually by accident, when in the course of attempting to negotiate a family law settlement, we find ourselves in a conference with the opposing counsel, and perhaps the respective clients, where the dynamics were such that in a climate of positive energy, creative alternatives were presented. In that context, everyone contributed to a final settlement that satisfied all concerned and everyone left the conference feeling high energy, good feelings and satisfaction. More than likely, the possibility for a change in the way the parties related to each other in the future may have greatly increased. As a result, the lawyers may also develop a degree of trust between them that might make future dealings more productive.

So my premise has been: why not create this settlement climate deliberately? I propose doing this by creating a context for settling family law matters by, where possible, removing the trial aspects from consideration initially. I would do this by creating a coterie of lawyers who would agree to take cases, on a case-by-case basis, for **settlement** only. The understanding would be that if it were determined at any time that the parties could not agree and settlement didn't appear possible, or if for other reasons adversarial court proceedings were likely to be required, the attorneys for both sides would withdraw from the case and the parties would retain new attorneys from there on out to final resolution.

I call the attorney in this settlement model a **collaborative** attorney, practicing in that case **collaborative** law.

The advantages of this collaborative-law model:

1. Each party is represented by an attorney of his/her choice. (This is usually not the case in mediation until after the mediation has been completed.)

2. This allows the lawyers to be focused in the settlement mode without the threat of "going to Court" lurking just around the corner. In the normal situation, settlement is often by-passed initially while the parties posture and the lawyers work on discovery.

3. There is continuity between settlement and processing the final dissolution. (This is usually not the case in mediation with the resulting problem of the lawyers not liking the mediated settlement.)

4. With the focus on settlement and avoiding court,the lawyers and clients are motivated to learn what works to achieve settlement; how to problem-solve without getting "plugged in" to the emotional content (a la "War of the Roses"). Lawyers who participate in this program will be motivated to develop win-win settlement skills such as those practiced in mediation (just like they now focus on sharpening trial skills).

5. Lawyers are freed up to use their real lawyering skills, i.e., analysis, problem solving, creating alternatives, tax and estate planning and looking at the overall picture as to what's fair.

6. Four-way conferences become the norm with positive energies being generated (because that's where the creative solutions lie) as all work collaboratively for a fair settlement. As in mediation, the potential is high for the clients to have a lot of input.

7. Clients and potential clients get an orientation in which they are advised of the advantages, including cost savings, of this approach and the kind of attitude and frame of mind that is most likely to achieve fair, prompt, efficient and positive settlements that work for both parties.

8. When cases don't settle and new attorneys are retained for trial, the clients have had the best shot both ways, i.e., a settlement specialist and a trial specialist (in my experience they usually don't come in the same package).

9. Settling matters on a collaborative basis is just more fun!

Practically, I am in the process of having lunch with some of my family law attorney-friends and inviting them to be open to participate in a collaborative model, should the occasion arise. The only requirement, as I've said, is an understanding by all concerned that the two attorneys would withdraw at such time as further settlement efforts appeared fruitless. The reception I have received has been encouraging.

Eventually there might be a referral listing for use by prospective clients enumerating lawyers willing to handle a matter on a collaborative basis.

Personally, about four months ago, I made the final moves to abandon my trial practice (which was already slanted toward settlement) to devote myself exclusively to a family law settlement practice. This means that I have unilaterally declared that I will not go to court in an adversarial matter. My practice is fun again!

Among other things, I spend a lot of time educating clients and prospective clients on the merits of settlement--however that can be achieved--and of avoiding unnecessary or premature use of the courts. I also stress the mindset that is optimal for settlement. Enclosed is an article I published which I hand out and find useful in helping clients center themselves for productive settlement work.

Because of your interest in this field and the fact that we both know there's "got to be a better way" of resolving most of these matters, I wanted to give you the above outline of what I'm up to. I would be most happy to discuss this--or other settlement alternatives--with you further at your convenience if you should wish to do so.

I apologize for the length of this letter. If nothing else, however, it has helped me to get my thinking on this subject somewhat organized.

Very truly yours,
Stuart G. Webb

I am now making my own declaration: I am going to become a full-time collaborative lawyer and mediator to help clients settle their disputes amicably and outside Court. Litigation will have to be undertaken by the other members in the firm. It will be a new and long journey and yet another risk to take. I am uncertain what lies ahead. But I am certain I will have many exciting adrenaline-filled days ahead.

▶ **Rajan Chettiar**
Rajan Chettiar LLC
E-mail: rajan@rajanchettiar.com


*Teach Nan Pháidí, a café in a thatched cottage on Inis Mór, Arran Islands, Co. Galway.*

# An Irish Road Trip

*Poulnabrone Dolmen in the Burren, Co Clare.*

When one listens to the traditional Irish songs about the country and then experiences the raw beauty of its surroundings, the mountains, the lakes, its coastlines and islands, one understands completely the effect the land has on its own people and others. Ireland is truly a magical place. The beauty of the land and the inimitable character of its people never fail to amaze me every time I visit.

It is always a pleasure visiting my Irish in-laws but the most recent trip was more ambitious. We were to embark on a road trip along the Wild Atlantic Way, a meandering scenic driving route that wound along the entire length of Ireland's jagged and deeply indented west coast. Completing the entire route would take weeks and so we would merely attempt a few sections in the middle, using a rented

cottage in Co. Galway as a base. The trip was all the more special due to the fact that we were to be joined by my wonderful mother-in-law, who can rarely be persuaded to travel.

We flew into Dublin on a Saturday, greeted by the cold and crisp air of an Irish July. The Viking tour was at the top of our to-do list. What better way to see Dublin, a city established by 8th century Viking invaders, than in a military amphibious vehicle of Second World War vintage, pimped out to look like a Viking's … amphibious vehicle. We were all issued plastic horned "Viking helmets" and encouraged to roar in unison at innocent pedestrians as we passed. Our guide was a gregarious Dubliner who had a typically wry sense of humour and he had us laughing so hard at every turn that we didn't even realise we were learning history. Some of the more memorable sights included Trinity College, St Patrick's Cathedral and the Georgian house where Oscar Wilde was born. The short foray onto the chilly waters of the Grand Canal was refreshing. The cold air hits you as the vehicle rolls off the ramp and splashes into the water from where one can see U2's recording studios as well as the impressive European headquarters of Facebook and Google in the south Dublin docklands. Their relatively recent move to locate their main European operations in Ireland is no doubt largely attributable to the country's low corporation tax but it would be unfair to attribute their presence only to tax policy. Ireland's knowledge economy also provides a ready tech-savvy workforce.

*The Cliffs of Moher, Co. Clare.*

*Pony and trap waiting for passengers at the harbour at Cill Rónáin, Inis Mór, Arran Islands, Co. Galway.*

Indeed these innovative tech companies' presence in Ireland is emblematic of a reinvigorating and outward looking economy that is ready to embrace new ideas and prepared to co-opt foreign talent to forge a new identity for itself. The Husband observed that Dublin city seemed more vibrant and cosmopolitan than when he lived there during the boom years almost a decade earlier. Indeed all the public buses and trains had free wi-fi as did every café, restaurant and pub we stopped in. The city centre was bustling with people from all over the world and every corner we turned revealed another artisanal bakery, brasserie or hole in the wall cafe providing every kind of cuisine imaginable, often at not unreasonable prices. I speculated that the death knell of the Celtic Tiger economy of the 2000's might just have been the push that these hitherto comfortably salaried urbanites needed to explore their entrepreneurial and innovative sides and give a new lease of life to


*The cottage of Irish patriot, Patrick Pearse, in Ros Muc, Connemara, Co. Galway.*

the city with some home-grown small business development. The relatively recent re-availability of credit from the banking sector, albeit at less preferable rates than would previously have been offered, seemed to be having an almost immediate impact, even if this seemed to be primarily concentrated in Dublin city alone for now.

After the hour long tour, it was time for a hot whisky to warm the blood. Where better for two thirsty lawyers to go than to the Shelbourne Hotel where the original Irish constitution was drafted in May 1922, just a stone's throw away from Leinster House, today's Parliament building. With 42 varieties of whisky to choose from, the Shelbourne Hotel was definitely a treat but the prices were all too reminiscent of Singapore so we moved on to James Toners on Baggot Street. A very traditional old Dublin pub with stone-flagged floors and worn dark wood panelling, it boasted the 2010 award for "best snug", which, as the name would suggest, is a little partitioned intimate corner in the pub – cosy and snug. Apparently, WB Yeats was a former patron. After a few more hot whiskeys, I could almost taste the literary inspiration.

The next destination was Galway City – the arts capital of Ireland. It was a two-hour journey by train, which is the best way to travel there. The railroad takes a scenic route through the flat grassy plains of Kildare where racehorses are bred, then on through the peat bogs of the midlands which finally give way to the stone-fenced little fields of County Galway. The terminus is right in the centre of the city from where the city can best be experienced on foot.

Galway City has a unique bohemian vibe that is entirely its own. We had arrived during the Galway International Arts Festival which takes place in July. The city was buzzing with street performances and art exhibitions, much of which was concentrated on the city centre's narrow pedestrianised streets. There was also a huge inflatable whale in the sky – apparently it was art! It was a great location for people-watching, because it attracted people from all walks of life.

After a few days eating potatoes cooked in all ways imaginable (boiled, mashed, roast, etc.), I had a craving for some Asian food and was pleasantly surprised by the green curry with beef served with basmati rice from the Artisan Restaurant on Galway's Quay Street. Galway is also a great place to eat seafood, being along the coast. The Husband had the seafood chowder and salmon with lentils. After the huge lunch we enjoyed a nice long walk out of the city along the promenade to Salthill to visit cousins. It was a half-hour walk with strong gusts of wind coming in off the ocean but the sun was shining brightly. Seagulls, ducks and swans provided company along the way. The cousins in question were legal academics at the National University of Ireland, Galway as well as new homeowners so the conversation moved easily between the cost of renovation and Irish constitutional law and was conducted over tea and pastries. After that I paid a visit to a former Irish client who was back from Singapore for a short visit to her family in Salthill. There, her mother showered us with more obligatory tea and pastries. This lifestyle could be dangerously easy to get used to.

After our day in the city we retired to our rented cottage outside the small village of Spiddal in the heart of the *Gaeltacht.* The *Gaeltachtaí* are the few remaining predominantly rural areas where Irish remains the lingua franca of many.

*View of Loch Eileabhrach from Patrick Pearsé's cottage in Ros Muc, Connemara, Co. Galway.*

Irish is the national language of Ireland but few outside of the *Gaeltachtaí* can speak it fluently and do so in their daily lives despite it being formally taught to every Irish student as a second language in school. It is a member of the Celtic family of languages, a family it shares with Welsh and Scots Gaelic, and sounds unlike anything one is likely to have heard before. It was a pleasure to hear it being spoken freely among the patrons of Spiddal's several public houses, although on a few occasions I was informed that what I was actually hearing from time to time was a smattering of English in a very thick rural accent.

It was here that our road trip along the Wild Atlantic Way would begin in earnest, starting with the segment from Spiddal to Clifden. This segment featured some breathtakingly beautiful views of the coast jutting out haphazardly into the Atlantic for miles and miles. Further inland we found ourselves rolling between jagged mountains and peat bogs, sometimes dissected by handbuilt dry stone walls into tiny fields occasionally inhabited by no more than a few sheep or a pony. The sense of space felt utterly liberating after the daily grind of living in a densely populated city and this was exactly what I needed from my holiday. Lunch featured lots of fresh fish at an award winning seafood restaurant in Clifden, followed by some pastries from a bakery for the road.

The following day, we headed south to cover some of County Clare's parts of the Wild Atlantic Way and we set aside a whole day for Clare. The first part of the trip was to the Burren, a landscape that was vastly different from the typical green that is usually associated with Irish natural surroundings. As the roads are windy and narrow, you get a pleasant surprise at each twist and turn when you see a new perspective of the landscape in its full glory. The Burren is about 250 sq. km of sprawling hills made of exposed karst limestone structures. There were a number of historical and archaeological sites the most notable of which was a Dolmen or monolithic tomb, which was an ancient burial site from the Stone Age.

*Poll na bPéist (Wormhole), a naturally occurring rectangular blowhole on the coast of Inis Mór, Arran Islands, Co. Galway.*

The next sight to see was the famous Cliffs of Moher. At its highest point, the cliffs are 214 metres and stretch for eight kilometres along the Atlantic coast of Country Clare. It was drizzling when we arrived but the weather cleared up as soon as we started the trek upwards. The Cliffs of Moher attract over a million visitors every year and in addition to the picturesque view (as if you need anything else), there are other attractions such as the Heritage Centre where we watched a 3D video of the cliffs from the perspective of a seagull. The cliffs attract bird species like puffins, choughs and kittiwake and in fact is home to one of the largest remaining puffin colonies in Europe.

A ferry from Ros a' Mhíl, County Galway, brought us to our next stop,

the Arran Islands. It comprises three islands located at the mouth of Galway Bay. We headed to the biggest of the islands, Inis Mór, which is a *Gaeltacht*. Upon our arrival, we were greeted by a charming young island man, who persuaded us to travel by his equally charming horse, Minnie (originally named Mickey) with cart attached. Though the journey was slightly bumpy, the island lad had many interesting stories with which to regale us. The island's location away from the mainland has allowed it to preserve its own unique dialect of Irish to this day and we were told that as recently as a generation ago, there were about a dozen different dialects of the language being spoken for each of the little villages on the island, as the island's rugged terrain made travel between even the island's villages unappealing.

As the winds from the coast were very strong, we decided to have some cake after our horse ride. We came across this café, Teach Nan Phaidi (which means Nan Paidi's house) where my sisters-in-law had strawberry sponge cake while the father-in-law had apple tart. I had a chocolate chip cookie and some hot chocolate. It was a chance encounter but the dessert was unbelievably tasty. Only later did we read the amazing reviews on Trip Advisor and discover they were ranked the number one restaurant on Inis Mór. The cakes and sweet treats were quickly burnt off with the amount of walking that followed. If you are not much of a walker, you can get around the island by bicycle (there are many bike rental shops on the island) or the hop on/hop off bus. We walked for most of the way, enjoying the sights of cattle and horses grazing. We walked and walked from the village of Gort na gCapall until we came across a remarkable feature – Poll na bPéist or the Worm Hole. The name betrays the wonders of this natural rectangular shaped pool into which the sea ebbs and flows at the bottom of cliffs south of Dún Aonghasa. The 2012 Red Bull Cliff Diving competition took place at Inis Mór, with 14 divers from all around the world competing to dive 27 metres through the air and into the freezing cold water. After a whole day of walking, we hopped on the bus back to the harbour to enjoy another seafood dinner before heading back on the ferry.

The last leg of the journey was a slight departure from the Wild Atlantic Way to Cork – or as it is fondly referred to by its inhabitants, the "real capital of Ireland". The people, known as Corkonians, are fiercely proud of their county and its traditions. They are possessed of a wonderfully charming superiority complex and are to Ireland what the Texans are to America. There is even an "official" spoof seccessionist movement that, with tongue firmly in cheek, refers to the county as "The People's Republic of Cork". The people are the real treasures of this place – everyone greets each other with such warmth and familiarity that strangers become friends almost instantaneously. They are refreshingly down to earth and in Cork, one's social status is measured not by the car one drives or the handbag one totes but rather by how quickly and effortlessly one can exchange witty insults with others in a time-honoured activity known as "banter". Before attempting to travel to Cork, it is essential that you understand that the only relevant measure of one's character in Cork is one's capacity to amuse others with good conversation and a person who is deemed to have such capacity is referred to approvingly as "good *craic*".

Dinner in Cork City that night was at Yuan Ming Yuan on Prince's St as the Husband insisted that he missed "proper Western Chinese food" (which apparently means crispy duck in orange sauce followed by fortune cookies). Fortunately, this restaurant is Malaysian-run which means they also have proper spicy food – I had the Szechuan black pepper beef. It was the same place we had eaten two years ago and the waiter, who was from Ipoh, actually remembered us which really impressed us. He gave me a brief crash course on Cork slang to help me fit in, which was basically suggesting that I replace my Singlish "la" with the Cork "like". Meanwhile the Husband was delighted to have found a Malaysian in Cork to whom he could show off his very limited Malay (*cukup untuk cari makan*). The waiter was deemed to be "good *craic*".

After dinner, we headed out to An Spailpín Fánach on South Main Street for a pint of Murphy's. Murphy's is Cork's beautiful black frothy stout and I must say, much better than its more well-travelled Dublin equivalent, Guinness. As we were in The Spailpín, I was advised to also try a pint of Beamish, as the Beamish brewery used to be just across the street. Beamish is Cork's other beautiful black stout, usually slightly cheaper than Murphy's but its availability on tap (and quality) outside of Cork can be patchy. Beamish is even better than Murphy's – lighter and a bit sweeter and can be drank more quickly in larger quantities ... although this may be just because I had already had a pint of Murphy's first. Note that both stouts should always be consumed in volumes consisting of multiples of the pint (imperial measurement system) and never half-pints. That would attract the scorn and contempt of the publican and other patrons.

The Irish are known for their good humour, generosity and their love for *craic*. The beauty of the land and the warmth of its people is enough to convince anyone to visit Ireland, especially in summer time.

▶ **Nadia Moynihan**
Kalco Law LLC
Member, Young Lawyers Committee

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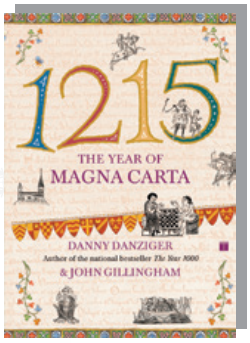
# Christmas Reading for Lawyers

**Publications Committee**
The Law Society of Singapore

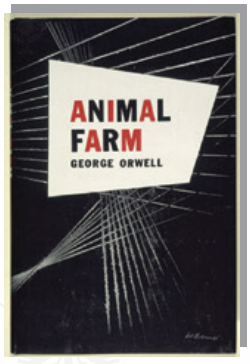
There was a time, John Mortimer QC said, when the only literary works a barrister needed to know were the Bible and Shakespeare. Perhaps that was because the two in combination reveal human nature in all of its manifestations and a set of guidelines to deal with its extremes. For better or worse, lawyers now need to know more. With that in mind, the Publications Committee thought it might be useful and interesting to compile a list of books helpful to lawyers. We are not pompously asserting that you must read these to be a good lawyer – many of the books on this list we read only later in our career. Rather, they are works we found useful in helping us understand the law, our profession and the machinations of human nature, and, dare we say it, even holding a mirror up to ourselves and giving some insight into our own condition.

With such competition for our time and tso many works to choose from, it can be difficult to decide what to read. One Australian Federal Court Judge alternates between fiction and non-fiction to keep a balance, knowing that quality fiction can be very effective at revealing ourselves to ourselves and in provoking thought on broader issues than the law itself. That strategy and our little list might be of some assistance to younger lawyers overwhelmed by demands and choice.

So with Christmas and the new year coming up, hopefully you would have a bit of a breather to check out some of the book recommendations below, or if you are stuck in a gift giving rut and don't know what to gift your fellow lawyer friends this Christmas, why not consider these suggestions?

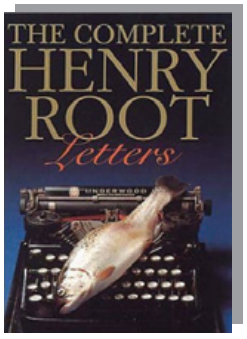



*1215* is the story of Magna Carta, the social conditions at the time, the events leading to its signing and those following. This small book is an excellent introduction to this seminal document, written in an accessible style and full of interesting and useful information. Lawyers from the common law tradition should know the essentials of Magna Carta. Highly recommended.

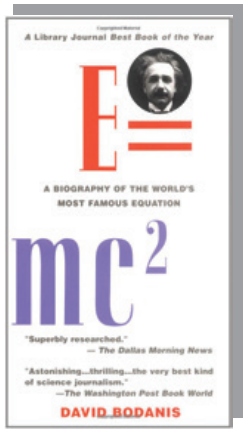



*Animal Farm* is an essential not only for lawyers but for all participants in a polity. In a very accessible way, it reveals important aspects of human nature and of the development (or regression) of political systems. If you read it at school, please read it again – and again. New insights are gained with each reading.

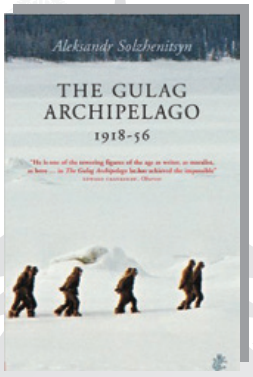

No prizes for guessing what this book might be about, but it is easily readable and another very good introduction to its subject. Understanding the long road to the formation of the Westminster style parliament helps not only in the practice of law in our own country, but also in understanding the journey of other countries towards constitutionalism, democracy, the rule of law and representative assemblies. Despite the emergence of parliament having a relatively long history, it is very relevant today when we see other countries beginning on a similar road.



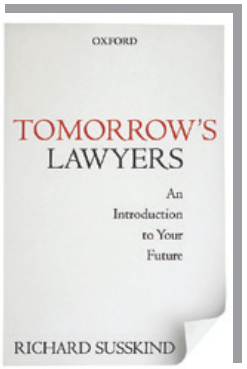

Henry Root's hilarious and irreverent letters should be read not only for their comic relief, which we need, but also for his ability to look at accepted institutions and situations in society in a completely different way. He is able to assess them objectively and almost as if he is an alien, a valuable skill for lawyers when assessing the various aspects of practice.



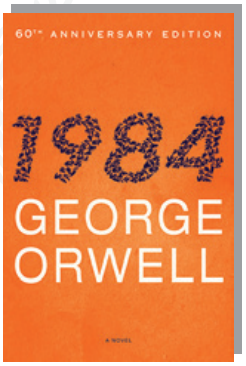

*E = mc2 A Biography of the World's Most Famous Equation* may seem a very strange book to have on a lawyer's reading list. Its place here is due to its not being a law book. It is good to read outside our discipline to stretch our mind and to be aware of the fundamentals of the world and life, even if we don't fully understand or study them. For someone who is not scientifically bent at all, this was an excellent work, written in a very accessible style, and was able to give some awareness of the forces that are at the essence of the world. One of those accidental purchases that turns out to be a real gem.



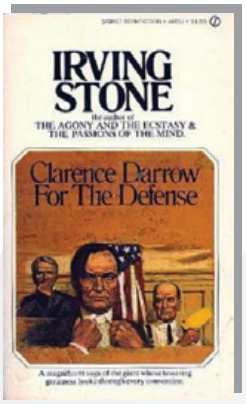

Lawyers should have a grasp of essential history as well as an understanding of the worlds' political systems and of the extremes of human nature. This work – which we would class as essential for thinking humans – documents, in excoriating detail and appropriately spare prose, the concentration camps established in the early days of the USSR. Types of these camps still exist in the world today - see the *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, UN Human Rights Council, 7 February 2014. In the "must read" basket.




In *Tomorrow's Lawyers: An Introduction to Your Future*, Professor Richard Susskind seeks to "provide tomorrow's lawyers and legal educators with an accessible account of the pressing issues that currently face the legal profession and the justice system". Written in the context of legal practice in the UK, issues such as disruptive legal technologies, the future for law firms, the changing role of the in-house lawyer, prospects for young lawyers, etc are nonetheless central for Singapore legal professionals – current and aspiring – in a rapidly changing legal landscape. This 165-page book provides a roadmap to envision and prepare for the future of the legal industry.




Written in 1948, *1984* is surprisingly prescient not only of that year but also of 2015. Orwell saw the omniscience of television and the "distortion" of language (or its progression, depending on one's view) and other aspects of society that may be yet to happen. Very effective in holding a mirror to our society now and enabling us to see it more objectively. If you read it in school, as many of us did, please read it again and you'll find it far more enjoyable.




This is just one example of an inspiring biography that can shape your view of your profession and your role in it and in life generally. A well written biography of an outstanding person can change your approach to practice and even to living, and this is one of them. Darrow was a passionate and brilliant lawyer who devoted his talents to justice as we understand that concept. There are many other biographies to choose from – read as many as you can.

# Chiropractic Care

With growing concerns over medication and the side effects of combining various prescription drugs, chiropractic care, which advocates a natural, conservative, no surgery and drugs approach is growing in popularity in Singapore.

## What is Chiropractic?

Chiropractic is the third largest doctoral-level health care profession after medicine and dentistry (Haldeman Meeker, *Annals of Internal Medicine* (2002)). The term "chiropractic" is derived from the Greek word *"chiropraktikos"*, meaning "done by hand".

The World Health Organization defines chiropractic as a health care profession concerned with the diagnosis, treatment and prevention of disorders of the neuromusculoskeletal system and the effects of these disorders on general health. Chiropractic care emphasises the conservative management of the neuromusculoskeletal system without the use of medicines and surgery (World Health Organization (WHO) definition, *Guidelines on Chiropractic* (2005)).

## Conditions

Chiropractic care is most commonly used to address neuromuscular complaints including but not limited to headaches, migraines, neck pain, whiplash, spondylosis, back pain, slipped or herniated disc, degenerative disc disease, scoliosis, poor posture, arthritis, sciatica, numbness, tingling, shoulder pain, frozen shoulder, tennis and golfer's elbow, wrist pain, carpal tunnel syndrome, knee and ankle pain, flat feet/pronation syndrome, temporomandibular joint ("TMJ") disorder, pregnancy aches and pains, and sports injuries. The patients' conditions are managed through natural, safe, non-invasive, drug and surgery free treatments.

Chiropractic care is a highly effective form of treatment for conditions such as neck and back pain. A study published in the journal Spine on lower back pain has shown that compared to those who sought care from medical doctors, chiropractic patients were more likely to be satisfied with their care, and less likely to seek care from another provider for that same episode of pain (Carey TS, Evans AT, Hadler NM, Lieberman G, Kalsbeek WD, Jackman AM, Fryer JG, McNutt RA, *Spine* (1996)).

## Chiropractic Treatment

Chiropractic treatments include manual manipulation with the hands, also known as adjustments, ergonomic and postural assessments, nutritional, dietary and lifestyle counselling, cold or heat therapy, therapeutic and rehabilitative exercises. The type of treatment used will largely depend on the condition, the severity of the condition and the likely outcomes.

While chiropractic treatment rarely causes discomfort, patients, may occasionally experience mild soreness or aching following treatment (as with some form of exercise), which usually dissipates in a day or two. Chiropractic is, therefore, suitable for just about anyone, pregnant women and children included.

## Benefits of Chiropractic Care

Through specialist advice and chiropractic care, chiropractors can help to promote positive spinal health, restore nervous system function and provide guidance towards a healthier lifestyle.

In a study conducted over seven years, it was found that patients whose primary care physician was a chiropractor had 60.2 per cent fewer in-hospital admissions, 59.0 per cent fewer hospital days, 62.0 per cent fewer outpatient surgeries and procedures, and 85 per cent lesser pharmaceutical costs when compared with patients whose primary care physician was not a chiropractor (Sarnat RL, Winterstein J, Cambron JA, *Journal of Manipulative and Physiological Therapeutics* (2007)).

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Pursuant to s 93(5) of the Legal Profession Act, the Council of the Law Society is required to publish the findings and determination of the Disciplinary Committee in the *Singapore Law Gazette* or in such other media as the Council may determine to adequately inform the public of the same.

This summary is published pursuant to the requirement of s 93(5) of the Legal Profession Act.

# Disciplinary Tribunal Reports

## In the Matter of Ravi s/o Madasamy, an Advocate and Solicitor

The Disciplinary Tribunal determined pursuant to s 93(1)(b) of the Legal Profession Act (the "Act") that the Respondent should pay a penalty sufficient and appropriate to the acts of grossly improper conduct in the discharge of his professional duty under s 83(2)(h) of the Act and alternatively for misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or member of an honourable profession within the meaning of s 83(2)(h) of the Act.

The disciplinary proceedings against the Respondent arose from a complaint by the Attorney-General under s 85(3) of the Act that the Respondent in his capacity as the advocate and solicitor on record for several plaintiffs/applicants in extant proceedings against the Attorney-General (the "legal proceedings") had prematurely released various Court documents relating to these legal proceedings to the media and thereafter made certain statements to the media in respect of the legal proceedings which were calculated to interfere with the fair proceeding or trial of the legal proceedings.

The following charges were preferred against the Respondent with the first to fourth charges being essentially the same in construction differing only in the material dates and the reference number assigned to the Originating Summons in question. The same was also true for the fifth to seventh charges.

### *First Charge*

"That you, Ravi s/o Madasamy, an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of:

(a) grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161);

(b) alternatively, a breach of paragraph 61 of the Law Society of Singapore's Practice Directions and Rulings 2013, such breach amounting to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161); or

(c) in the further alternative, misconduct unbefitting an advocate and solicitor as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act.

In that you caused the premature release of the unendorsed Originating Summons and supporting affidavit in Originating Summons No.753/2013 to the media on 21 August 2013 prior to: (a) the aforesaid Originating Summons being served on the Respondent, (b) the aforesaid affidavit being admitted at the hearing of the Originating Summons, or (c) leave of Court being obtained for the release of the aforesaid Originating Summons and/or affidavit".

### *Seventh Charge*

That you, Ravi s/o Madasamy, an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of:

(a) grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161);

(b) alternatively, a breach of Rule 67 of the Legal Profession (Professional Conduct) Rules read with Paragraph para 61 of the Law Society of Singapore's Practice Directions and Rulings 2013, such breach amounting to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161); or

(c) in the further alternative, misconduct unbefitting an

advocate and solicitor as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act.

In that you caused an email to be sent to the media on 17 January 2014 in respect of Originating Summons No.25/2014 containing statements calculated to interfere with the fair proceeding of the Originating Summons No.25/2014 containing statements calculated to interfere with the fair proceeding of the Originating Summons No.25/2014 which had yet to be concluded".

At the hearing, the Disciplinary Tribunal was left to determine whether the matter fell under limb "(b)" or "(h)" under s 83(2) of the Act and whether sufficient cause exists pursuant to s 93(1) of the Act. Counsel for the Society referred to Re Lim Kiap Khee [2011] 2 SLR (R) 398 ("*Re Lim Kiap Khee*") as well as *The Law Society of Singapore v Chia Ti Lik* [2011] SGDT 4 ("*Chia Ti Lik*") which sought to clarify that where the misconduct constitutes grossly improper conduct under s 83(2)(b), the Act would, ipso facto, amount to conduct unbefitting an advocate and solicitor under s 83(2)(h) of the Act.

The Respondent pleaded guilty at the onset of the proceedings and informed the Disciplinary Tribunal through his Counsel that when the complaint first came to his knowledge, he wrote to the Complainant to apologise for the premature release of the documents and making the various statements to the media. He subsequently held a press conference which contained his apology and his unconditional and unreserved withdrawal of all statements made by him. Further, he undertook not to repeat his conduct and through his Counsel, urged the Disciplinary Tribunal to determine that the Respondent should either be reprimanded or ordered to pay a penalty in accordance with s 93(1)(b) of the Act.

## *Findings of the Disciplinary Tribunal*

Having heard the parties, it fell upon the Disciplinary Tribunal to determine which limb under s 83(2) of the act, the misconduct by the Respondent fell under. In the case of *Chia Ti Lik*, the charges preferred were framed under s 83(2)(h) of the Act and in Re Lim Kiap Khee, the charges preferred were brought under s 83(2)(b) and/or s 83(2)(h) of the Act. The Courts had in *Re Lim Kiap Khee* concluded that the Respondent's act in the matter having amounted to "grossly improper conduct" under s 83(2)(b) of the Act would *ipso facto* amount to "conduct unbefitting an advocate and solicitor" under s 83(2)(h) of the Act and accordingly that he be struck off vis-à-vis the case of *Chia Ti Lik* where the Disciplinary Tribunal determined that a penalty would suffice. Returning to the present case, the Respondent had pleaded guilty to grossly improper conduct and had admitted to the facts and charges as set out in the Statement of Case. Following the approach taken by the Court in *Re Lim Kiap Khee,* the Disciplinary Tribunal finds that the admission by the Respondent to grossly improper conduct would *ipso facto* also amount to conduct unbefitting an advocate and solicitor under s 83(2)(h) of the Act.

What remained was for the Disciplinary Tribunal to makes its determination under s 93 of the Act. The Disciplinary Tribunal was of the view that there was no legal basis to suggest that any Disciplinary Tribunal is bound to make a determination under s 93(1)(c) of the Act for charges brought under s 83(2)(b) of the Act and similarly under s 93(1)(b) for charges brought under s 83(2)(h) of the Act. The facts that have been presented before the Disciplinary Tribunal and the mitigation plea of the Respondent have to be given due consideration and it is of relevance that the Respondent had issued an apology and had withdrawn the offending statements. He had at the onset of the proceedings pleaded guilty before the Disciplinary Tribunal as well as shown remorse for his conduct and the Disciplinary Tribunal accepts that the Respondent's acts were the result of over-enthusiasm and that he had unwittingly overstepped the line.

Further the Disciplinary Tribunal took into consideration that the released documents were already filed in Court and that they were prematurely released before service was effected on the Complainant. His misconduct lies in releasing these documents prematurely to the media but no threats were made unlike *Re Gopalan Nair* [1992] 2 SLR(R) 969 where the Respondent was accused of threatening and making an accusation against the Attorney-General. It should be noted that the Respondent had given an undertaking not to repeat this present misconduct and he will not doubt be appropriately dealt with should the undertaking be breached. Notwithstanding this, the present case does not involve dishonesty, fraud or other serious acts that would warrant a determination under s 93(1)(c) of the Act. For all the aforesaid reasons, the Disciplinary Tribunal determined that no cause of sufficient gravity exists for disciplinary action and that the Respondent be ordered to pay a penalty. In addition, the Disciplinary Tribunal ordered, pursuant to s 93(2) of the Act, that the Respondent pay the Society costs in the amount of $3,000 plus reasonable disbursements.

## *The Council's Decision*

Council having considered the Disciplinary Tribunal report and the mitigation of the Respondent resolved to adopt the findings and recommendations of the Disciplinary Tribunal and imposed a penalty of $7,000 on the Respondent.

## In the Matter of Thirumurthy Ayernaar Pambayan, an Advocate and Solicitor

The Disciplinary Tribunal found the Respondent guilty of misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (the "Act") in relation to one of the five charges preferred against him.

The disciplinary proceedings against the Respondent arose from a complaint that the Respondent had acted for his client (the vendor) in an illegal "cash back" transaction in contravention of s 60 of the Housing and Development Act. The allegation was that the Respondent made a false statement to the HDB that the sale price was $465,000 despite knowing that his client had agreed to refund $5,000 to the Complainant (the purchaser) on the completion of the sale. The Respondent is also alleged to have communicated with the purchaser and took advantage of the purchaser by not advising him to seek independent legal advice, persuaded him to complete the sale despite knowing that the property in question was a matrimonial property which was being contested by his client's ex-husband.

The following five charges were preferred against the Respondent:

### *First Charge*

"You, Thirumurthy Ayernaar Pambayan, an advocate and solicitor, are charged, that on or about 20 January 2012, you did take advantage of Kheng Thian Sang ("Mr Kheng") contrary to your position as an officer of the Court, to wit, without informing Mr Kheng to seek independent legal advice, persuaded him while acting for Madam Arfa Binte Adam ("Mdm Arfa") to proceed with the sale and purchase of a HDB flat at Blk 815 Tampines Avenue 4 #04-239 Singapore 520815 despite your knowledge of the pending divorce proceedings between Mdm Arfa and her ex-husband, and such conduct by you amounts to a breach of Rule 53A of the Legal Profession (Professional Conduct) Rules, and you have thereby breached a rule of conduct made by Council under the provisions of the Legal Profession Act, as amounts to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161)".

### *Second Charge*

"You, Thirumurthy Ayernaar Pambayan, an advocate and solicitor, are charged, that on or about 20 January 2012 to in or around April 2012, you acted and continued to act for the vendor Madam Arfa Binte Adam ("Mdm Arfa") in the sale of her HDB flat at Blk 815 Tampines Avenue 4 #04-239 Singapore 520815 ("the HDB Flat") despite your knowledge of an illegal agreement between the purchaser Mr Kheng Thian Sang ("Mr Kheng") and Mdm Arfa, whereby in spite of the stated sale price of $465,000.00 in the Option to Purchase of the HDB Flat, Mdm Arfa agreed to refund to Mr Kheng the sum of $5,000.00 from the purchase price of $465,000.00, and such conduct by you amounts to misconduct unbefitting an advocate and solicitor (sic) as an office of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Cap 161)".

### *Third Charge*

"You, Thirumurthy Ayernaar Pambayan, an advocate and solicitor, are charged that, on or around 1 February 2012 to on or around 20 April 2012, you did communicate with a client of another advocate and solicitor in the same transaction without the express approval of the other said advocate and solicitor, to wit, while acting for the vendor Madam Arfa Binte Adam ("Mdm Arfa") in the sale of her flat at Blk 815 Tampines Avenue 4 #04-239 Singapore 520815 ("the HDB Flat"), without informing or seeking the consent of M/s Teoh & Co. the solicitors acting for the purchaser Kheng Thian Sang ("Mr Kheng"), you communicated directly with Mr Kheng via telephone conversations as regards the sale and purchase of the HDB Flat, and such conduct by you amounts to a breach of Rule 48 of the Legal Profession (Professional Conduct) Rules and you have thereby breached a rule of conduct made by Council under the provisions of the Legal Profession Act, as amounts to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161)".

### *Fourth Charge*

"You, Thirumurthy Ayernaar Pambayan, an advocate and solicitor, are charged that, on or around 20 April 2012, you did advise Kheng Thian Sang ("Mr Kheng") whose interests are opposed to that of your client Madam Arfa Binte Adam ("Mdm Arfa"), without informing Mr Kheng to seek independent legal advice, to wit, you advised Mr Kheng, while acting for Mdm Arfa, Mr Kheng and Mdm Arfa having opposing interests, not to deposit the post-dated cheque of $5,000.00 which was given to Mr Kheng by Mdm Arfa and further the proceeds of the sale of Mdm Arfa's HDB flat at Blk 815 Tampines Avenue 4 #04-239 Singapore 520815 was held by you as a lawyer, and you assured Mr Kheng that he would be able to recover the sum of $5,000.00 owed from Mdm Arfa, and such conduct by you amounts to a breach of Rule 30 of the Legal Profession (Professional Conduct) Rules and you have thereby breached a rule

of conduct made by Council under the provisions of the Legal Profession Act, as amounts to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161)".

### *Fifth Charge*

"You, Thirumurthy Ayernaar Pambayan, an advocate and solicitor, are charged that, on or around 20 April 2012 to in or around December 2012, you did advise Kheng Thian Sang ("Mr Kheng") whose interests are opposed to that of your client Madam Arfa Binte Adam ("Mdm Arfa"), without informing Mr Kheng to seek independent legal advice, to wit, you advised Mr Kheng while acting for Mdam Arfa, Mr Kheng and Mdm Arfa having opposing interests, that the delay in the refund for for $5,000.00 was due to the disputes and disagreements between Mdm Arfa and her ex-husband on the distribution of the net proceeds of the sale of the HDB flat at Blk 815 Tampines Avenue 4 #04-239 Singapore 520815 ("the HDB Flat"), and further that Mr Kheng would only be able to recover the $5,000.00 from Mdm Arfa after the Court had released the proceeds of the sale of the HDB Flat to Mdm Arfa, thereby giving Mr Kheng an impression that his interests were protected by you, and such conduct by you amounts to a breach of Rule 30 of the Legal Profession (Professional Conduct) Rules and you have thereby breached a rule of conduct made by Council under the provisions of the Legal Profession Act, as amounts to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap 161)".

Alternative charges based on contravention of s 83(2)(h) of the Act were also preferred against the Respondent.

### *Findings of the Disciplinary Tribunal*

The Disciplinary Tribunal noted that the parties agreed on the general facts of the case, although the issue as to whether the Respondent knew of the $5,000 refund was in dispute. On this, the Respondent offered two differing versions. In the first version, he stated he came to know of the refund only after the completion of the sale, whilst in the second version he claimed that he had knowledge of the refund only two days prior to the completion of the sale. The Disciplinary Tribunal found the Respondent's position on the refund of $5,000 confusing and unsatisfactory.

On the first charge, the Disciplinary Tribunal felt that the Respondent was trying to help his client to keep the sale alive. He called the Complainant to persuade him to continue with the purchase. The DT found that the Complainant was well informed of the vendor's divorce and her husband's refusal to sign the option. The Respondent persuaded the Complainant

to continue, and did not advise him or pressure him to do that. Thus the Disciplinary Tribunal found that the first charge (and the first alternative charge) was not made out.

On the second charge, the Disciplinary Tribunal noted that the agreement to refund the $5,000 was one made between the Complainant and the Respondent's client. Neither the client's ex-husband nor the Complainant's wife knew of such an arrangement. The agreement was made on 20 January 2012 but was superseded by the another agreement of 1 February 2012 in which the sale price of $465,000 was recorded without any diminution on account of the $5,000 that the client agreed to make to the Complainant on her own accord. The Disciplinary Tribunal opined that the parties to the second agreement did not put in a falsely high price to enable the purchasers to obtain greater financing, they were not stating a false price to induce the Syariah Court to approve the sale, to mislead any regulatory authorities or to deprive the vendor's ex-husband of his proper share of the proceeds. The client wanted to ensure that the flat was sold and not acquired by HDB, and she was willing to sacrifice $5,000 of her share of the proceeds for the purpose. Thus the Disciplinary Tribunal found this was not illegal and accordingly found that the second charge (and second alternative charge) was not made out.

As for the third charge, the Disciplinary Tribunal noted the Respondent's admission that he did not inform M/s Teoh & Co about the conversations or stop the Complainant from contacting him and that he knew that the Complainant was represented by them. However, the Respondent did not initiate these calls. The Disciplinary Tribunal found the third charge made out but there were mitigating factors to consider, to wit, he did not initiate the conversations and that no advantage was gained or prejudice was caused by the conversations. As for the alternative charge, the Disciplinary Tribunal found no justification for the alternative charge when the same basis for the principal charge was employed.

On the fourth charge, the Disciplinary Tribunal stated that the charge was that the Respondent breached r 48 of the PCR as he had advised the Complainant:

1. not to deposit the vendor's cheque for $5,000;

2. that the proceeds of sale of the flat was held by him as a lawyer; and

3. that the Complainant would be able to recover the $5,000 from the vendor when the Complainant's interest were opposed to the vendor's and without informing the Complainant to seek independent legal advice.

The Complainant's allegations were based on his account of a conversation which he alleged he had with the Respondent. The Disciplinary Tribunal found no clear evidence that the alleged conversation took place. Some indirect evidence was offered by way of an audio recording and the transcribed notes of the recording. However, the Disciplinary Tribunal found that the recording and the transcription was not was not fully comprehensible but, with some difficulty, the Disciplinary Tribunal made out that the Complainant was complaining about not receiving the $5,000, he reminded the Respondent that the Respondent said he would hold on to the money and that it can be collected when something was settled in Court. This evidence, coupled with the fact that the Respondent did hold with the cheque, led the Disciplinary Tribunal to find that there was some substance in the Complainant's account.

However, the Disciplinary Tribunal found that r 30 of the PCR was not breached. The Disciplinary Tribunal was of the view that r 30 would only apply if the Complainant had sought advice from the Respondent, then the Respondent should decline to advise and after that the Respondent should inform the Complainant to obtain independent advice, and if the Complainant does not do that, the Respondent must ensure that the Complainant is not under the an impression that his interests are protected by him. The Disciplinary Tribunal found that there was nothing improper about the advice given by the Respondent as the Respondent knew that the sales proceeds had not been distributed to the client and as such she had no funds to honour the cheque, it was a fact that the Respondent was holding the proceeds of sale pending the resolution of the dispute between the client and her ex-husband and the client would have been able to make payment when the proceeds were released for distribution. The Disciplinary Tribunal felt that when the advice was given it was correct and the Respondent could not have anticipated that distribution would be delayed or that the client would subsequently be made a made a bankrupt by another creditor and the proceeds were handed over to the Public Assignee. The Disciplinary Tribunal therefore determined that the aforesaid advice was given in good faith and that the fourth charge or its alternative was not made out.

The fifth charge relates to events after the completion of the sale and purchase when the Complainant did not receive the $5,000 payment. On the facts the Disciplinary Tribunal found that the Respondent had advised the Complainant on the payment of the $5,000. The Disciplinary Tribunal was of the view that the Complainant had asked the Respondent as the client's lawyer for the payment of the $5,000 and the Respondent was explaining to him why that had been delayed and when the payment would be made. That advice was given by the Respondent in his capacity as the client's lawyer and it was not directed against her interest and did not contravene r 30. Accordingly, the Disciplinary Tribunal determined that the fifth charge (and the fifth alternative charge) was not made out.

Thus the Disciplinary Tribunal found that the First Charge, Alternative First Charge, the Second Charge, the fourth Charge and Alternative Fourth Charge and the Fifth Charge and Alternative Fifth Charge were not made out. The Disciplinary Tribunal determined that the Third Charge was made out and that if the Alternative Third Charge was a separate charge, it too could be made out. However, it was an alternative charge and the Respondent can only be found guilty of and dealt with on either the principal or the alternative charge, and not both. The Disciplinary Tribunal determined under s 93 of the Act that, whilst no cause of sufficient gravity for disciplinary action exists under s 83 for the third charge, the Respondent should be reprimanded. As for costs, the Disciplinary Tribunal determined that each party pay its own costs.

## *The Council's Decision*

Council accepted the determination made by the Disciplinary Tribunal under s 94(3) of the Act and accordingly reprimanded the Respondent.

## New Law Practices

**Ms Regina d/o Vallabadoss** (formerly of Godwin Campos LLC) has commenced practice under the name and style of **Regina Law Chambers** on 15 October 2015 at the following address and contact numbers:

133 New Bridge Road
#10-10 Chinatown Point
Singapore 059413
Tel: 6532 3066
Fax: 6532 3086
E-mail: regina@reginalaw.com.sg
Website: www.reginalaw.sg

## Dissolution of Law Practices

The law practice of **Bee See & Tay** dissolved on 15 October 2015.

Outstanding matters of the former law practice of **Bee See & Tay** have, with effect from 16 October 2015, been taken over by:

**Goodwins Law Corporation**
3 Anson Road
#07-01
Singapore 079909
Tel: 6464 9449
Fax: 6323 4230
E-mail: info@goodwinslaw.com
Website: www.goodwinslaw.com

## Change of Law Practices' Addresses

**Assomull & Partners**
111 North Bridge Road
#07-16 Peninsula Plaza
Singapore 179098
Tel: 6339 4466
Fax: 6339 5544
E-mail: law@assomull.com.sg
Website: www.assomull.com.sg
(wef 16 November 2015)

**B. B. Marican Maideen & Co**
133 New Bridge Road
#13-08 Chinatown Point
Singapore 059413
Tel: 6346 1940
Fax: 6345 5297
E-mail: bblaw@lawbbm.com
(wef 16 November 2015)

**Firoze & May LLC**
20 Havelock Road
#02-34 Central Square
Singapore 059765
Tel: 6538 1411
Fax: 6438 1411
E-mail: firoze@firoze.com.sg
Website: www.firoze.com.sg
(wef 29 October 2015)

**FSLaw LLC**
3 Philip Street
Level 19 Royal Group Building
Singapore 048693
Tel: 6809 5392
E-mail: faith.sing@fslaw-asia.com
Website: www.fslaw-asia.com

**Lutfi Law Corporation**
Blk 430 Lorong 6 Toa Payoh
#10-01 Orange Tee Building
Singapore 319402
Tel: 6255 3811
Fax: 6255 3812
E-mail:
enquiries@lutfi-lawcorporation.com
(wef 26 October 2015)

**Muzammil & Company**
Blk 9 Jalan Kukoh
#01-87
Singapore 160009
Tel: 6220 8606
Fax: 6220 6605
E-mail: muzammil@mnplaw.com.sg
(wef 26 October 2015)

**T G Chan Law Practice**
101 Upper Cross Street
#04-29 People's Park Centre
Singapore 058357
Tel/Fax: 6536 3346
E-mail: chantg@tgchan.com.sg
(wef 18 October 2015)

**Tan & Yip LLC**
24 Peck Seah Street
#05-11 Nehsons Building
Singapore 079314
Tel: 6323 0030
Fax: 6323 0032
E-mail: general@tanyip.com.sg
(wef 5 November 2015)

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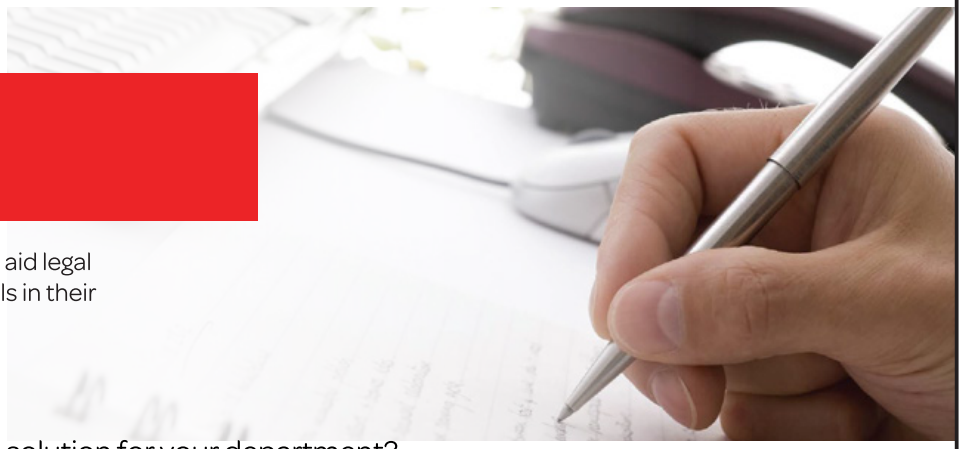

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# Information on Wills

| Name of Deceased (Sex)<br>NRIC<br>Date of Death | Last Known Address | Solicitors/Contact Person | Reference |
|---|---|---|---|
| Chua Teng Kok (M)<br>S1128491D<br>19 June 2015 | Blk 18 Hougang Avenue 3<br>#02-159<br>Singapore 530018 | Rodyk & Davidson LLP<br>6885 3786 | FMS/CHY/<br>OHH/42115.1 |
| Teo Heng Leong (M)<br>S1520450H<br>22 September 2015 | Blk 516 Jurong West Street 52<br>#08-45<br>Singapore 640516 | Heng, Leong & Srinivasan<br>6429 0729 | 2015-2418 |
| Koh Li Meng (M)<br>S2034490C<br>27 June 2015 | Blk 10 Lorong 25A Geylang<br>#03-01<br>Singapore 388224 | Leong Partnership<br>6223 3222 | LYK.5072.15.G |
| Tarun Saigal (M)<br>S2746482C<br>15 May 2015 | 1 Jalan Kuala<br>#18-01<br>Singapore 239639 | Seng Sheoh & Co.<br>6533 9161 | SW/PB/TS/2015 |
| Toh Chee Keong (M)<br>S0901937E<br>19 July 2015 | Blk 201 Tanjong Rhu Road<br>#12-10<br>Singapore 436917 | GSM Law LLP<br>6969 7667 | GS.BSM/20152909-336 |
| Kasim s/o Taiyebali (M)<br>S2001192J<br>28 September 2015 | Blk 108 Jalan Rajah<br>#04-122<br>Singapore 320108 | Aziz Tayabali & Associates<br>6533 0505 | AT/ml/2436/10/2015 |
| Lam Chou Nkow @Lam Chou (M)<br>S2005037C<br>11 October 2015 | Blk 143 Petir Road<br>#12-222<br>Singapore 670143 | Jayne Wong Advocates & Solicitors<br>6466 9221 | JW/ll/81926/P |
| Ng Kim Hoi (F)<br>S0780592F<br>8 August 2015 | Blk 2 St George's Road<br>#11-49<br>Singapore 322002 | AsiaLegal LLC<br>6333 1121 | JN/2015104686/DORA |
| Tan Liew Huang (F)<br>S0298134C<br>31 July 2015 | Blk 711 Clementi West Street 2<br>#09-213<br>Singapore 120711 | Tan Leroy & Chandra<br>6429 0788 | LST/T/7284/2015/c |
| Adaham Bin Mahbob (M)<br>S0088242I<br>5 October 2015 | Blk 250 Bangkit Road<br>#03-342<br>Singapore 670250 | Jayne Wong Advocates & Solicitors<br>6466 9221 | JW/ll/81920/LA |
| Cheong Seow Chan (F)<br>S2164866C<br>28 August 2015 | 11 Sunbird Road<br>Singapore 487136 | Wong Thomas & Leong<br>6501 9400 | AW 1509026 kg |
| Tan Kiong Bee (F)<br>S7277859F<br>31 March 2014 | Blk 22 Woking Road<br>#02-03<br>Singapore 138700 | Drew & Napier LLC<br>6531 2447 | JLTL/393925 |

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## Private Practice

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Leading offshore firm is looking for a senior associate to join its new team in Singapore. This lawyer will assist in a broad range of advisory and transactional corporate/M&A legal work and will also be involved in business development. (SLG 12899)

**TAX PROFESSIONAL SUPPORT LAWYER** — Singapore — 5+ PQE

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**AVIATION/ASSET FINANCE ASSOCIATE** — Singapore — 3-5 PQE

A leading international law firm is seeking an asset finance lawyer. Candidates with experience in aviation matters will be at an advantage. This team is growing and offers a broad workload for the right candidate. (SLG 12963)

**BANKING ASSOCIATE** — Singapore — 2-4 PQE

Global magic circle firm is looking for a mid-level banking lawyer in Singapore. The ideal candidate should be qualified in Singapore, Australia or UK, with strong transactional experience in banking finance work from a top tier local or international firm. (SLG 12898)

**CONSTRUCTION DISPUTES ASSOCIATE** — Singapore — 2-4 PQE

Leading disputes practice is seeking a first class construction lawyer with a focus on contentious work. This firm has access to top tier international matters and has a renowned reputation in its field. (SLG12965)

**ENERGY ASSOCIATE** — Singapore — 1-3 PQE

This top tier international law firm is seeking an energy lawyer, ideally, with previous experience in M&A/project development in the energy sector. Those who have power, O&G/LNG, mining and energy trading experience will be well regarded. (SLG 12840)

## In-House

**ANTI-TRUST COUNSEL (PRIVATE EQUITY)** — Singapore — 6-13 PQE

Major Investment Company is looking for a lawyer to advice on anti-trust matters relating to its global investments. The ideal candidate should be qualified in a commonwealth law jurisdiction with at least 6 years PQE and with strong experience advising companies on merger control regimes globally or in the region. (SLG 12332)

**FINANCE COUNSEL (PROJECT FINANCE)** — Singapore — 7-12 PQE

Singapore based engineering company seeks a mid-level to senior finance lawyer to join their legal team based in Singapore. The ideal candidate should have at least 7 years PQE, with strong banking finance experience especially in drafting, negotiating and advising on project finance. (SLG 12929)

**REGIONAL COUNSEL (PROJECT/CONSTRUCTION)** — Singapore — 5-7 PQE

Major international property company is looking for a mid-level lawyer to join their team in Singapore. The ideal candidate should have at least 3 years PQE with experience in either advising on real estate construction related issues or drafting construction contracts, or construction related dispute matters. (SLG 12710)

**LEGAL COUNSEL (INFRASTRUCTURE/ ENGINEERING)** — Singapore — 5-7 PQE

Leading engineering company listed in Singapore seeks a mid-level lawyer to join their legal team based in Singapore. The lawyer will be responsible for advising on their regional and global project infrastructure transactions. The ideal candidate should have at least 5 years PQE with experience in drafting, negotiating and advising on construction projects work. (SLG 12928)

**CORPORATE LAWYER** — Singapore — 4-8 PQE

Major US listed company in the IT space is looking for a legal counsel to join their established legal team based in Singapore. This counsel will be part of a dynamic team of lawyers supporting the business across the APAC region. Candidate should have at least 4 years PQE in corporate commercial work gained from either in-house or private practice. (SLG 11732)

**LEGAL COUNSEL (INVESTMENT BANK)** — Singapore — 3-5 PQE

Global investment bank is looking for a junior lawyer to join their legal team based in Singapore. This lawyer will be responsible for supporting the bank in advising and negotiating on OTC documentation in relation to structured products. The ideal candidate should have at least 3 years PQE with experience and familiarity in either banking finance, capital markets or derivatives products, gained in a top tier law firm or financial institution. (SLG 12773)

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Unique opportunity for an M&A lawyer to step into this business-focused role within a major global company, advising on and negotiating Warranty & Indemnity Insurance. This client-facing role will suit a pro-active candidate with good networking skills. Fluent Mandarin preferred.
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## CORPORATE COUNSEL
This global company is looking to hire an experienced corporate lawyer to join their APAC legal team. Based in Singapore, you will work as part of a team, advising on general corporate matters as well as regulatory and compliance issues. In-house experience preferred.
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## SENIOR IP COUNSEL
A global entertainment brand is looking for their first Southeast Asia Counsel to focus on IP matters in the region. This is an autonomous role for a strong and mature lawyer with IP litigation background. Ideally, you come from a top tier law firm with MNC experience.
Ref: 204271 10+ years

## SENIOR COUNSEL
This global automaker is seeking a Deputy General Manager, Legal to support its expanding business in the Asia market. In this regional role, you will report to the Head of Legal in Singapore, while managing two other lawyers. Good in-house experience in a MNC is ideal.
Ref: 203981 9+ years

## LEGAL COUNSEL
This award winning entertainment company is looking for a legal counsel to join their team. You will advise on general corporate matters, including venue and event related agreements. Ideally, you have in-house experience in the media industry, or from a top law firm.
Ref: 204491 5+ years

## SENIOR LEGAL COUNSEL
This award winning entertainment company is looking for a senior legal counsel to join them. Reporting to the Head Legal, you will work autonomously, advising on general corporate matters. Ideally, you have in-house experience in the media industry, or from a top law firm.
Ref: 204501 8+ years

## VP, LEGAL
This international homegrown manufacturing company is looking for a VP, Legal to join their senior management team and head the existing legal team. You will work closely with the business and ideally have a background in technology or IP matters.
Ref: 204481 12+ years

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Ref: 195161 Partner

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To be considered for this position, you must be admitted as a solicitor and advocate in Singapore, with between 4 and 10 years of relevant legal experience. You must also have some experience representing financial institutions on key M&A transactions and various investment projects. This is an excellent opportunity for a corporate lawyer with financial institution experience seeking to establish themselves with a leading entity.

**Contact Armin Hosseinipour (Reg ID: R1440509) for more information at armin.hosseinipour@hays.com.sg or +65 6303 0725.**

### LEGAL MANAGER (SHIPPING)

A prominent shipping company is seeking a Legal Manager to join its regional hub in Singapore.

This is a standalone position focusing on all commercial and transactional legal matters for the company across South East Asia, China, Hong Kong, Korea, India, Philippines and the Middle East. You will be heavily involved in contracts drafting and negotiation, compliance and legal advisory to different business units. This is an excellent opportunity for an experienced senior lawyer seeking to take the next step in their career within a regional role.

To be considered for this position, you must have between 10 and 15 years of relevant legal experience, preferably from the shipping, heavy industries or engineering sectors. You must also have experience on regional legal matters as well be capable of working in a standalone position. You must also have an extensive amount of experience working in Singapore.

**Contact Armin Hosseinipour (Reg ID: R1440509) for more information at armin.hosseinipour@hays.com.sg or +65 6303 0725.**

### FINANCIAL SERVICES LEGAL COUNSEL

A leading multinational bank is seeking a Legal Counsel to join its legal department in Singapore.

You will have a strong focus on investment funds, trusts and financial regulation in the provision of legal advice to the bank's operations. You will be liaising with senior lawyers in a collaborative team environment, together with assisting in the review and negotiation of legal and commercial documentation concerning the bank's products.

To be considered for this position, you must be qualified as a solicitor and advocate in Singapore with between 4 and 8 years of post-qualified experience. It is highly advisable that you come from a legal position pertaining to financial services, funds or investments, from a top-tier law firm or similar in-house position. This is a great opportunity for a financial services lawyer seeking to take the next step in their career with a prominent institution.

**Contact Armin Hosseinipour (Reg ID: R1440509) for more information at armin.hosseinipour@hays.com.sg or +65 6303 0725.**

### AVIATION FINANCE ASSOCIATE

A prominent international law firm is seeking an experienced Associate to join its strong asset finance practice in Singapore. You'll focus on aviation and structured finance including challenging and complex transactions pertaining to aircraft sales & purchase, aircraft leasing, debt financing and securities matters. The position is highly transactional and will involve extensive contracts drafting and negotiation.

You must be admitted as a solicitor in the UK, Australia or Singapore and possess between 2 and 6 years of legal experience in aviation or structured finance. You'll demonstrate a strong passion for this particular practice area, together with being collaborative, ambitious and driven to succeed.

**Contact Armin Hosseinipour (Reg ID: R1440509) for more information at armin.hosseinipour@hays.com.sg or +65 6303 0725.**

### CORPORATE ASSOCIATE, LEADING INTERNATIONAL LAW FIRM

A leading international law firm is seeking a mid to senior level Corporate Associate to join its expanding practice in Singapore.

You"ll be joining a high-performing team and be responsible for managing junior associates within Corporate Practice. You'll oversee a spectrum of complex public and private M&A transactions and also be involved in corporate advisory work and joint ventures.

To be considered, you must have 5 to 8 years of post qualification experience in a Corporate team at a top law firm. In addition to excellent academic qualifications, you must demonstrate leadership qualities and have the ability to work within a fast-paced environment.

**Contact Negeen Pejooh (Reg ID: R1547320) for more information at negeen.pejooh@hays.com.sg or +65 6303 0725.**

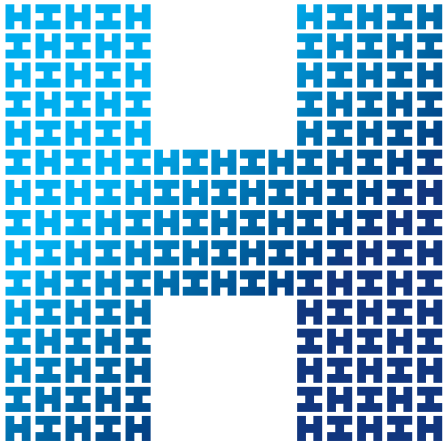
### HEAD PATENT ATTORNEY

A highly regarded international law firm is seeking a Head Patent Attorney to join its renowned intellectual property group. You will lead a team of patent attorneys through the expansion and development of the practice.

You'll oversee drafting of patent specifications and prosecutions and work with the IP litigation team on domestic and cross-border patent litigation. You'll build a thriving client portfolio and maintain effective relationships.

To be considered, you must be a qualified Patent Attorney with excellent academic credentials from a technical specialism. You must have 10 years of experience in patent drafting and prosecution.

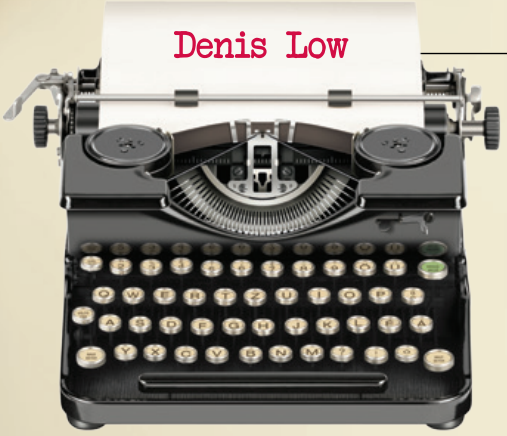
**Contact Negeen Pejooh (Reg ID: R1547320) for more information at negeen.pejooh@hays.com.sg or +65 6303 0725.**



# The JLegal PQE

Personality Questionnaire Experience

## Denis Low



Head, Compliance,
Information Technology & Operations
at Standard Chartered Bank

Every month, JLegal examines the PQE of a senior in-house counsel. This month we talk to Denis Low and wish we were invited over to his house for Sunday dinner.

- **What is on your mind at the moment?**
  Which recipe to try out for Sunday dinner and the wine pairing. More seriously for work, how do we set the Bank up to consume more cloud services.
- **Which talent would you most like to have?**
  Mind reading.
- **What is your idea of misery?**
  Negotiating with counterparts who do not have a commercial bone in their body.
- **What do you most value in your friends?**
  Genuineness.
- **If you weren't a lawyer you would be a …**
  A National Geographic writer… maybe it's not too late…
- **What is your most precious possession?**
  Memories.
- **Where were you born?**
  Kuala Lumpur.
- **Where is the best place you have ever been to?**
  In terms of sheer awesomeness, the Grand Canyon in Arizona.
- **What is your greatest regret?**
  Not completing my piano education.
- **What is the strangest thing you have seen?**
  Out of this world cave formations.
- **What do you consider your greatest achievement?**
  Finding someone who would want to spend the rest of her life with me… so far…
- **What is your motto?**
  To quote Churchill, KBO - keep bug***ing on!
- **Top 3 favorite movies of all time?**
  The Godfather 2, Dead Poets Society and any number of Hitchcock films.
- **What do you consider the most overrated virtue?**
  Being nice.
- **What is your greatest extravagance?**
  Wine and Watches.
- **If you could change one thing about yourself, what would it be?**
  A little more patience and a little less proscratination.
- **What irritates you?**
  Apathy.
- **What would you like to be remembered for?**
  Did some good and spread some happiness..

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